

IN THE MATTER OF  
THE APPLICATION OF  
RAM MOBILE DATA USA LTD. PTNSHP.  
FOR A SPECIAL EXCEPTION ON  
PROPERTY LOCATED ON THE EAST  
SIDE OF LATHE ROAD, 3.029  
SOUTHEAST OF THE CENTERLINE OF  
DOLEFIELD AND WATTS ROADS  
(4613 LATHE ROAD)  
2ND ELECTION DISTRICT

ON REMAND  
FROM THE  
CIRCUIT COURT FOR  
BALTIMORE COUNTY

Civil Action  
No. 94-CV-06991/87/275

(PETITION OF LYONS MILL  
PARTNERSHIP FOR JUDICIAL REVIEW,  
ZONING CASE NO. 93-427-X

**MODIFIED ORDER PURSUANT TO REMAND ORDER OF THE  
CIRCUIT COURT FOR BALTIMORE COUNTY**

This matter comes before the Board on remand by Order of the  
Circuit Court for Baltimore County dated March 13, 1995 with  
direction from the Honorable Robert E. Cahill, Sr. that the Board's  
Order of July 13, 1994 be modified to provide that the utilization  
period for the special exception granted to RAM terminated on  
September 1, 1994.

IT IS THEREFORE this 13th day of April, 1995, by  
the County Board of Appeals of Baltimore County

ORDERED that the Board's Order of July 13, 1994 be and is  
hereby modified to provide that the utilization period for the  
special exception granted to RAM terminated on September 1, 1994.

COUNTY BOARD OF APPEALS  
OF BALTIMORE COUNTY

William T. Hackett, Chairman

Harry E. Buchheiser, Jr.

Judson R. Lipowitz



**County Board of Appeals of Baltimore County**

OLD COURTHOUSE, ROOM 49  
400 WASHINGTON AVENUE  
TOWSON, MARYLAND 21204  
(410) 887-3180

April 18, 1995

Howard L. Alderman, Jr., Esquire  
LEVIN & GANN, P.A.  
Suite 113  
305 W. Chesapeake Avenue  
Towson, MD 21204

RE: Case No. 93-427-X  
Circuit Court Case No. 94-CV-6991  
RAM Mobile DATA USA Ltd. Partnership

Dear Mr. Alderman:

Enclosed please find a copy of the Modified Order issued this  
date by the County Board of Appeals of Baltimore County in the  
subject matter, pursuant to the Remand Order of the Circuit Court.

Very truly yours,

Kathleen C. Weidenhammer  
Administrative Assistant

encl

cc: Julius W. Lichter, Esquire  
Lyons Mill Partnership  
c/o David S. Brown Enterprises  
G. Scott Barhight, Esquire  
RAM Mobile Data USA Ltd. Partnership  
Mr. Thomas A. Kieffer /Ben Dyer Assoc., Inc.  
Jonathan Swiss, Esquire  
People's Counsel for Baltimore County  
Pat Keller  
Lawrence E. Schmidt  
W. Carl Richards /ZADM  
Docket Clerk /ZADM  
Arnold Jablon, Director /ZADM

**CIRCUIT COURT FOR BALTIMORE COUNTY  
CIVIL CATEGORY JUDICIAL REVIEW 87/275/94CV6991**

PETITION OF: LYONS MILL PARTNERSHIP  
C/O DAVID S. BROWN ENTERPRISES

FOR JUDICIAL REVIEW OF THE DECISION OF THE:  
COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY

IN THE CASE OF: RAM MOBILE DATA USA LTD.  
PARTNERSHIP-Special Exception

**ATTORNEYS**

HOWARD L. ALDERMAN, JR.  
LEVIN & GANN, P.A.  
305 WEST CHESAPEAKE AVENUE  
SUITE 113  
TOWSON, MARYLAND 21204  
(410) 321-0600

Charlotte E. Radcliffe  
Board of Appeals, Room 49, Basement  
Old Courthouse, 400 Washington Ave.  
21204 887-3180

(1) July 28, 1994, Petitioner Lyons Mill Partnership, petition for Judicial  
Review, fd.

(2) Aug. 17, 1994 Board of Appeals' Certificate of Notice, fd. (rec'd 8-9-94)

(3) Sept. 23, 1994 - Transcript of Record fd. (REC)

(4) Sept. 23, 1994 - Notice of Filing of Record fd. Copies Sent.

(5) October 20, 1994 Appellant's Motion and Order of Court EXTENDING  
time for filing Appellant's Memorandum as specified, etc., fd. (CMK)

(6) November 9, 1994 Appellant's Motion and Order of Court EXTENDING time  
for filing Appellant's Memorandum as specified, etc., fd. (REC)

(7) December 16, 1994, Pltff's Motion For Summary Judgment,  
memorandum, exhibit, fd. (rec'd 12/15/94)  
Feb. 28, 1995 Hon. Robert E. Cahill Sr. Case settled. Order to be signed.

(8) Mar 13, 1995 Memorandum Opinion and Order of Court remanding case to the  
County Board of Appeals, etc, fd. (REC, SR)

True Copy Test  
Per [Signature]  
Docket Clerk

Docket 87 Page 275 Case 94 CV.06991

IN RE: Petition of Lyons Mill  
Partnership for Judicial  
Review of the decision  
of the County Board of  
Appeals for Baltimore  
County

IN THE  
CIRCUIT COURT  
FOR  
BALTIMORE COUNTY

In the Case of: Ram  
Mobile Data USA Ltd.  
Partnership - Special  
Exception (4613 Lathe  
Road)

Agency Case No. 93-427-X

**MEMORANDUM OPINION**

**Background Facts**

Baltimore County owns and maintains a 400-foot tower in Owings  
Mills for transmitting "911" calls, a public purpose exempt from  
compliance with the Baltimore County Zoning Regulations. In April,  
1993, Ram Mobile Data USA Ltd. Partnership ("RAM") entered into a  
lease with the County under which an antennae was to be placed on top  
of its tower and a small building was to be constructed adjacent to  
it. To infuse life into the lease, the County and RAM jointly  
petitioned for a special exception, but the County took no part in  
the proceedings that followed. Lyons Mill Partnership, which owns  
land abutting the tower property, opposed the special exception.

The Zoning Commissioner granted the relief requested over the  
objection of Lyons Mill, which appealed his decision to the County  
Board of Appeals. After an evidentiary hearing, the Board concluded  
that all requirements for a special exception had been met by RAM  
and, on July 13, 1994, affirmed the decision of the Zoning  
Commissioner.

FILED MAR 13 1995

Pursuant to Md. Rule 7-202, Lyons Mill filed a timely Petition  
for Judicial Review of the Board's decision. The Board gave the  
requisite notice of that appeal by mail to "every party to the  
proceeding before it", specifically naming both RAM and its attorney  
in its Certificate of Notice (paper 2). However, no entity or person  
filed a response to the Lyons Mill Petition. The apparent loss of  
interest on the part of RAM is understandable since three weeks  
before the appeal was noted, it terminated its lease with the County,  
effective August 31, 1994 (Ct.Ex.1), and instructed its attorney  
below "not to defend the Board of Appeals Order or to participate in  
the appeal." (S.J. Mot. Ex.1).

**This Proceeding**

After obtaining several extensions of the due date of the  
Appellant's Memorandum, Lyons Mill opted to forego filing that paper  
and, instead, moved for summary judgment, arguing, in effect, that  
the Board should be reversed because its appeal is unopposed. The  
Court concludes that it lacks authority under Md. Rule 7-209 to  
resolve an administrative appeal by granting summary judgment to the  
appealing party, even though RAM, the sole adverse party in interest,  
abandoned its right to participate in this appeal when it failed to  
file a response to the Petition. *State Farm Mut. v. Ins. Comm'r*,  
283 Md. 663, 668 (1978). The Court, therefore, will exercise its  
discretion and fashion a result which comports with the current  
realities of this land-use dispute.

Clearly, RAM no longer has the desire or, for that matter, the  
capacity to implement its special exception. Baltimore County  
likewise has no present interest in it. However, under §502.3 of the

BCZR, once a variance has been granted it has a life of two years  
from the date of the final order granting it - unless, on appeal, the  
Board "fixes" a different utilization period.

Were the Court to decide this appeal on the merits, it would be  
rendering what amounts to an advisory opinion, an act disfavored  
under the law. On the other hand, if Lyons Mill obtains neither a  
reversal nor a modification, RAM conceivably could renegotiate the  
lease with the County and go forward with its project at any time  
during the next two years. That is patently unfair to Lyons Mill.  
Therefore, the Court will remand this action to the County Board of  
Appeals with instructions to modify its Order of July 13, 1994 to  
provide that the utilization period for the special exception granted  
to RAM terminated on September 1, 1994.

It is so ORDERED.

Date: March 9, 1995

Judge

Copy sent to:  
Howard L. Alderman, Jr., Esq.

Courtesy copies to:  
Stanley J. Shapiro, Esq., County Attorney  
G. Scott Barhight, Esq.

True Copy Test

Per [Signature]

Per [Signature]

IN RE: Petition of Lyons Mill Partnership for  
Judicial Review of the decision of the  
County Board of Appeals for Baltimore  
County

In the Case of: Ram Mobile Data USA  
Ltd. Partnership - Special Exception  
(4613 Lathe Road)

Agency Case No. 93-427-X

IN THE  
CIRCUIT COURT  
FOR

BALTIMORE COUNTY

Case No.: 94CV6991  
87/275

**ORDER**

Upon consideration of the Motion to Extend Time for Filing Memorandum and the  
Affidavit of Appellant's Counsel prepared and submitted to this Court by Appellant, it is this  
17th day of November, 1994,

ORDERED that the time for filing Appellant's Memorandum be and is hereby extended  
until Thursday, December 15, 1994.

JUDGE

True Copy Test  
SUZANNE MENSCH, Clerk

Per [Signature]  
Assistant Clerk

FILED NOV 9 1994

IN RE: Petition of Lyons Mill Partnership for  
Judicial Review of the decision of the  
County Board of Appeals for Baltimore  
County

In the Case of: Ram Mobile Data USA  
Ltd. Partnership - Special Exception  
(4613 Lathe Road)

Agency Case No. 93-427-X

IN THE  
CIRCUIT COURT  
FOR

BALTIMORE COUNTY

Case No.: 94CV6991  
87/275

**ORDER**

Upon consideration of the Motion to Extend Time for Filing Memorandum and the  
Affidavit of Appellant's Counsel prepared and submitted to this Court by Appellant, it is this  
17th day of November, 1994,

ORDERED that the time for filing Appellant's Memorandum be and is hereby extended  
until Thursday, November 10, 1994.

JUDGE

True Copy Test  
SUZANNE MENSCH, Clerk

Per [Signature]  
Assistant Clerk

FILED OCT 20 1994

94 OCT 21 PM 3:34



RE: PETITION FOR SPECIAL EXCEPTION : BEFORE THE ZONING COMMISSIONER  
E/S Lathe Rd. & 3,025 SE of Dolefield Rd. & Watts Rd. - 4215 : OF BALTIMORE COUNTY  
3rd Councilmanic Dist. : Case No. 93-427-X

ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the above-captioned matter. Notices should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order.

Peter Max Zimmerman  
People's Counsel for Baltimore County

Carole S. Demitz  
Deputy People's Counsel  
Room 47, Courthouse  
400 Washington Avenue  
Towson, Maryland 21204  
(410) 887-2188

I HEREBY CERTIFY that on this 22nd day of June, 1993, a copy of the foregoing Entry of Appearance was mailed to H. Emile Parks, County Attorney, Courthouse, 400 Washington Ave., Towson, MD 21204; and Jonathan Swiss, Esquire, 10 Woodbridge Center Drive, Woodbridge, N.J. 07645.

Peter Max Zimmerman

MICROFILMED



Petition for Special Exception  
to the Zoning Commissioner of Baltimore County

for the property located at 4613 Lathe Road, Owings Mills  
which is presently zoned D.R.-10.5

This Petition shall be filed with the Office of Zoning Administration & Development Management. The undersigned, legal owner of the property situated in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Exception under the Zoning Regulations of Baltimore County, to use the herein described property for a Wireless Transmitting and Receiving Facility

Property is to be posted and advertised as prescribed by Zoning Regulations. I, or we, agree to pay expenses of above Special Exception advertising, posting, etc. upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

Contract Purchaser/Lessor:

Ram Mobile Data USA Limited Partnership

By: Richard E. Merkle

10 Woodbridge Center Dr. Suite 950

Woodbridge, NJ 07095

City State Zipcode

Woodbridge, NJ 07095

City State Zipcode

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City State Zipcode



**ZONING HEARING ADVERTISING AND POSTING REQUIREMENTS & PROCEDURES**

Baltimore County Zoning Regulations require that notice be given to the general public/neighborhood property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property and placement of a notice in at least one newspaper of general circulation in the County.

This office will ensure that the legal requirements for posting and advertising are satisfied. However, the petitioner is responsible for the costs associated with these requirements.

**PAYMENT WILL BE MADE AS FOLLOWS:**

- 1) Posting fees will be assessed and paid to this office at the time of filing.
- 2) Billing for legal advertising, the upon receipt, will come from and should be remitted directly to the newspaper.

NON-PAYMENT OF ADVERTISING FEES WILL STAY ISSUANCE OF ZONING ORDER.

*Carl Jablon*  
ARNOLD JABLON, DIRECTOR

For newspaper advertising:

Item No.: 435

Petitioner: RAM Mobile Data USA Limited Partnership

Location: 4613 Lathe Road (2nd Floor)

PLEASE FORWARD ADVERTISING BILL TO:

NAME: Ben Dyer Associates, Inc.

ADDRESS: 8100 Professional Place

P.O. Box 1450 Landover MD 20785-2450

PHONE NUMBER: (301) 454-7000

AD:995

Revised 04/29/93

JUNE 11, 1993

**NOTICE OF HEARING**

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing on the property identified herein in Room 106 of the County Office Building, 111 W. Chesapeake Avenue in Towson, Maryland 21204

or  
Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

CASE NUMBER: 93-427-X (Item 435)

4613 Lathe Road

E/S Lathe Road and 3,029 SE of c/l Dolefield Road and Watts Road

2nd Election District - 3rd Councilmanic

Legal Owner(s): Baltimore County

Contract Purchaser(s): Ram Mobile Data USA Limited Partnership

HEARING: TUESDAY, JULY 6, 1993 at 11:30 a.m. in Rm. 118, Old Courthouse.

Special Exception for a wireless transmitting and receiving facility.

Arnold Jablon  
Director

cc: Ram Mobile Data USA Limited Partnership  
Ben Dyer Associates, Inc.  
Jonathan Swiss, Esq.

NOTES: (1) ZONING SIGN AND POST MUST BE RETURNED TO RM. 104, 111 W. CHESAPEAKE AVENUE ON THE HEARING DATE.  
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.  
(3) FOR INFORMATION CONCERNING THE FILING AND/OR HEARING, CONTACT THIS OFFICE AT 887-3353.

MICROFILMED

**NOTICE OF ASSIGNMENT**

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH RULE 2(b). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL BILL NO. 59-79.

CASE NO. 93-427-X

RAM MOBILE DATA USA LTD. PARTNERSHIP  
E/S Lathe Road & 3,029' SE of c/l of Dolefield Road and Watts Road (4613 Lathe Road)  
2nd Election District  
3rd Councilmanic District

SE -Approval for a wireless transmitting and receiving facility on the subject site (owned by Baltimore County, Maryland), to be operated by a private corporation (Ram Mobile).

9/10/93 -Z.C.'s Order in which Petition for Special Exception is GRANTED.

ASSIGNED FOR: TUESDAY, FEBRUARY 8, 1994 at 10:00 a.m.

cc: Howard L. Alderman, Jr., Esquire

Counsel for Appellants /  
Lyons Mill Partnership

G. Scott Barhight, Esquire  
Ram Mobile Data USA Ltd. Partnership

Counsel for Petitioner  
Petitioner

Mr. Thomas A. Kieffer /Ben Dyer Assoc., Inc.

Mr. Michael A. Stripeikis

Jonathan Swiss, Esquire

People's Counsel for Baltimore County

P. David Fields

Lawrence E. Schmidt

Timothy H. Kotroco

W. Carl Richards, Jr. /ZADM

Docket Clerk /ZADM

Arnold Jablon, Director /ZADM

Kathleen C. Weidenhammer  
Administrative Assistant

Printed with recycled paper  
on 100% recycled paper

June 25, 1993

Jonathan Swiss, Esquire  
10 Woodbridge Center Drive  
Woodbridge, NJ 07645

RE: Case No. 93-427-X, Item No. 435  
Petitioner: Baltimore County  
Contract Purchaser: Ram Mobile Data USA  
Limited Partnership  
Petition for Special Exception

Dear Mr. Swiss:

The Zoning Plans Advisory Committee (ZAC) has reviewed the plans submitted with the above referenced petition. The attached comments from each reviewing agency are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties, i.e., Zoning Commissioner, attorney and/or the petitioner, are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case.

Enclosed are all comments submitted thus far from the members of ZAC that offer or request information on your petition. If additional comments are received from other members of ZAC, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on June 1, 1993, and a hearing was scheduled accordingly.

The following comments are related only to the filing of future zoning petitions and are aimed at expediting the petition filing process with this office.

1) The Director of Zoning Administration and Development Management has instituted a system whereby seasoned zoning attorneys who feel that they are capable of filing petitions that comply with all aspects of the zoning regulations and petitions filing requirements can file their petitions with this office without the necessity of a preliminary review by Zoning personnel.

Zoning Plans Advisory Committee Comments  
Date: June 25, 1993  
Page 2

2) Anyone using this system should be fully aware that they are responsible for the accuracy and completeness of any such petition. All petitions filed in this manner will be reviewed and commented on by Zoning personnel prior to the hearing. In the event that the petition is not complete, the Zoning Commissioner will deny the petition due to errors or incompleteness.

3) Attorneys, engineers and applicants who make appointments to file petitions on a regular basis and fail to keep the appointments without a 72 hour notice will be required to submit the appropriate filing fee at the time future appointments are made. Failure to keep these appointments without proper advance notice, i.e. 72 hours, will result in the forfeiture loss of the filing fee.

Very truly yours,

*W. Carl Richards, Jr.*

W. Carl Richards, Jr.  
Zoning Coordinator

WCR:hck  
Enclosures



O. James Lighthizer  
Secretary  
Hal Kassoff  
Administrator

Ms. Helene Kehring  
Zoning Administration and  
Development Management  
County Office Building  
Room 109  
111 W. Chesapeake Avenue  
Towson, Maryland 21204

Re: Baltimore County  
Item No. 435 (MOR)

Dear Ms. Kehring:

This office has reviewed the referenced item and we have no objection to approval as it does not access a State roadway and is not effected by any State Highway Administration projects.

Please contact Bob Small at 410-333-1350 if you have any questions.

Thank you for the opportunity to review this item.

Very truly yours,

*Bob Small*  
John Contestabile, Chief  
Engineering Access Permits  
Division

My telephone number is \_\_\_\_\_

Teletypewriter for Impaired Hearing or Speech  
383-7555 Baltimore Metro - 565-0451 D.C. Metro - 1-800-492-5082 Statewide Toll Free  
707 North Calvert St., Baltimore, Maryland 21203-0717

BALTIMORE COUNTY, MARYLAND  
DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT  
INTER-OFFICE CORRESPONDENCE

June 29, 1993

TO: Mr. Arnold Jablon, Director  
Zoning Administration and  
Development Management

FROM: J. Lawrence Pilson  
Development Coordinator, DEPRM

SUBJECT: Zoning Item #435  
Ram Mobile Data  
4613 Lathe Road  
Zoning Advisory Committee Meeting of June 14, 1993

The Department of Environmental Protection and Resource Management offers the following comments on the above-referenced zoning item.

Development of the property must comply with the Forest Conservation Regulations.

JLP:VR:sp

RAMMOB/TXTS8P

BALTIMORE COUNTY, MARYLAND  
INTER-OFFICE CORRESPONDENCE

TO: Zoning Advisory Committee DATE: June 16, 1993

FROM: Jerry L. Pfeifer, Captain  
Fire Department

SUBJECT: June 24, 1993, Meeting

#433	-	No comments
#434	-	No comments
#435	-	No comments
#436	-	No comments
#437	-	No comments
#438	-	Building shall be built in compliance with the 1991 Life Safety Code and the Baltimore County Fire Prevention Code.
#439	-	Building shall comply with the applicable sections of the 1991 Life Safety Code and the Baltimore County Fire Prevention Code.
#440	-	No comments

RECEIVED  
JUN 17 1993

ZADM

MICROFILMED



## BALTIMORE COUNTY, MARYLAND

## INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director  
Zoning Administration and  
Development Management

DATE: June 28, 1993

FROM: Pat Keller, Deputy Director  
Office of Planning and Zoning

SUBJECT: Petitions from Zoning Advisory Committee

The Office of Planning and Zoning has no comments on the following petition(s):

(Item Nos. 420, 435, 441, 442, 444, 445, 446, 447, 448, 451, 452, 453, 459 and 461.

There is no action to be taken on these petitions.

If there should be any further questions of this office can provide additional information, please contact Jeffrey Long in the Office of Planning at 887-3480.

Prepared by: *Jeffrey W. Long*

Division Chief: *Pat Keller*

PK/JL:lw

Baltimore County Government  
Office of Zoning Administration  
and Development Management

111 West Chesapeake Avenue  
Towson, MD 21204

(410) 887-3353

October 14, 1993

G. Scott Barhight, Esquire  
Whiteford, Taylor, and Preston  
500 Court Towers  
210 W. Pennsylvania Avenue  
Towson, MD 21204

RE: Petition for Special Exception  
E/S Lathe Rd & 3,029 SE of c/l of Dolefield Rd  
and Watts Rd  
(4613 Lathe Road)  
2nd Election District  
3rd Councilmanic District  
Ram Mobile Data USA Ltd Partnership-Petitioner  
Case No. 93-427-X

Dear Mr. Barhight:

Please be advised that an appeal of the above-referenced case was filed in this office on October 7, 1993 by Howard L. Alderman, Jr. on behalf of Lyons Mill Partnership. All materials relative to the case have been forwarded to the Board of Appeals.

If you have any questions concerning this matter, please do not hesitate to contact Julie Winiarski at 887-3391.

Sincerely,

*Arnold Jablon*  
ARNOLD JABLON  
Director

AJ:jaw

c: Howard Alderman, Jr., Esquire  
Mr. Thomas A. Kieffer  
Mr. Michael A. Stripeiki  
People's Counsel

## APPEAL

Petition for Special Exception  
(E/S Lathe Road and 3,029 SE of c/l of  
Dolefield Road and Watts Road)  
4613 Lathe Road  
2nd Election District - 3rd Councilmanic District  
Ram Mobile Data USA Ltd-PETITIONER  
Case No. 93-427-X

Petition(s) for Special Exception

Description of Property

Certificate of Posting

Certificate of Publication

Entry of Appearance of People's Counsel

Zoning Plans Advisory Committee Comments

Petitioner(s) and Protestant(s) Sign-In Sheet

Environmental Impact Statement

Petitioner's Exhibits: 1 - Plat to Accompany Special Exception

Protestant's Exhibits: 1 - Topographical Map

Zoning Commissioner's Order dated October 10, 1993 (Granted)

Notice of Appeal received on October 7, 1993 from Howard L. Alderman, Esquire

c: Howard Alderman, Jr., Esquire, Levin & Gann, 305 W. Chesapeake Avenue, Towson, MD 21204  
G. Scott Barhight, Esquire, Whiteford, Taylor, and Preston, 500 Court Towers, 210 W. Pennsylvania Avenue, Towson, MD 21204  
Mr. Thomas A. Kieffer, Ben Dyer Associates, Inc., 8100 Professional Place, Landover, MD 20785  
Mr. Michael A. Stripeiki, 273 Janburen Street, Cynd, NJ 07071  
People's Counsel of Baltimore County  
Rm. 304, County Office Bldg., Towson, Md. 21204

Request Notification: P. David Fields, Director of Planning & Zoning  
Patrick Keller, Office of Planning & Zoning  
Lawrence E. Schmidt, Zoning Commissioner  
W. Carl Richards, Jr., Zoning Coordinator  
Docket Clerk  
Arnold Jablon, Director of ZADM

RAM MOBILE DATA USA LTD. PARTNERSHIP

93-427-X

E/S of Lathe Road 3,029' Southeast of  
the c/l of Dolefield and Watts Road  
(4613 Lathe Road)

2nd Election District

RE: Special Exception

June 1, 1993 Petition for Special Exception for a wireless Transmitting and Receiving Facility filed by Baltimore County as property owner and Jonathan Swiss, Esquire on behalf of Ram Mobile Data USA Ltd. Partnership ("Ram Mobile") as lessee.

July 6 Hearing held on Petition by the Zoning Commissioner.

Memorandum Opinion of the Zoning Commissioner in which filing of Petition for Special Exception was determined to be incomplete (decision to be rendered on Petition upon submittal of environmental impact statement).

September 10 Order of the Zoning Commissioner in which Petition for Special Exception was GRANTED.

October 17 Notice of Appeal filed by Howard L. Alderman, Jr., Esquire, on behalf of Lyons Mill Partnership.

February 8, 1994 Hearing before the Board of Appeals. (Deliberation at conclusion of hearing)

July 13 Opinion and Order of the Board in which the Petition for Special Exception was GRANTED.

July 28 Petition for Judicial Review filed in the Circuit Court for Baltimore County by Julius W. Lichter, Esquire and Howard L. Alderman, Jr., Esquire, on behalf of Lyons Mill Partnership.

August 8 Copy of Petition for Judicial Review received by the Board of Appeals from the Circuit Court for Baltimore County.

August 9 Certificate of Notice sent to interested parties.

September 25, 1994 Transcript of testimony filed; Record of Proceedings filed in the Circuit Court.

March 13, 1995 Memorandum Opinion issued by the OCT in which the case was REMANDED to the CBA to modify 7/13/94 Order to provide that the utilization period for S.E. granted to RAM terminated on 9/1/94.

12/14/93 -Notice of Assignment for hearing scheduled for Tuesday, February 8, 1994 at 10:00 a.m. sent to following:

Howard L. Alderman, Jr., Esquire  
G. Scott Barhight, Esquire  
Ram Mobile Data USA Ltd. Partnership  
Mr. Thomas A. Kieffer /Ben Dyer Assoc., Inc.  
Mr. Michael A. Stripeikis  
Jonathan Swiss, Esquire  
People's Counsel for Baltimore County  
P. David Fields  
Lawrence E. Schmidt  
Timothy H. Kotroco  
W. Carl Richards, Jr. /ZADM  
Docket Clerk /ZADM  
Arnold Jablon, Director /ZADM

## COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

## MINUTES OF DELIBERATION

IN THE MATTER OF: RAM MOBILE DATA USA LTD. PARTNERSHIP  
Case No. 92-427-X

DATE : February 8, 1994 /At conclusion of hearing

BOARD /PANEL : William T. Hackett, Chairman (WTH)  
Judson H. Lipowitz (JHL)  
Harry E. Buchheister, Jr. (HEB)

SECRETARY : Kathleen C. Weidenhammer  
Administrative Assistant

Those present included G. Scott Barhight, Esquire, Counsel for Petitioners; and Howard L. Alderman, Jr., Esquire, Counsel for Appellants.

PURPOSE --to deliberate issues and matter of petition for special exception presented to the Board; testimony and evidence taken this date. Opinion and Order to be issued by Board setting forth written findings of fact.

Opening statement by Chairman Hackett included recitation of case number, name and subject of petition filed.

HEB: After brief period of discussion between the Board members, HEB questioned access road /whether or not it exists.

JHL: Answered HEB's questions relative to access road; would use same access as that described in the easement entered into evidence.

HEB: Then, upon review of testimony and consideration of evidence presented, use of tower by RAM is well-justified; additions to existing tower are minimal; Petitioner has satisfied the requirements of 502.1, 502.7 and Schultz v. Pritts and special exception should be granted.

JHL: Concur with HEB; believes that all requirements of 502.1, 502.7 have been complied with; and that standards set forth in Schultz v. Pritts also complied with. Regarding 502.7.C6, concludes that it's been complied with based upon testimony given; concerns have been addressed by evidence. Written Opinion and Order will set forth specific findings of fact as to 502.1, 502.7 and Schultz v. Pritts. Conclusion is that, subject to specific findings of fact to be set forth in written Opinion and Order, special exception should be

## Deliberation /RAM MOBILE USA LTD PARTNERSHIP /93-427-X

granted.

Also briefly discussed access to the site, and Baltimore County's ability to give Petitioner such access; no attempt to defraud Petitioner on part of Baltimore County; reasonable belief that it could give access; nothing in easement prohibiting it from assigning to RAM.

Also reviewed argument that project would not exist but for the Baltimore County tower; use of existing tower is in spirit and harmony with BCZR; will reduce proliferation of towers in Baltimore County.

In summary, upon review of written Opinion and Order, will sign said Opinion and Order granting the special exception and approving the Petitioner's request for wireless transmitting and receiving facility on subject site.

WTH: Reviewed basis of special exception that is requested; almost minuscule compared to existing tower; reviewed testimony and evidence presented; addressed question of access, which Baltimore County has agreed to provide; regarding emissions, testimony exists that frequency as proposed would be well below standards; reviewed environmental impact statement; and sections 502.1, 502.7 and Schultz v. Pritts. Final determination is that special exception should be granted.

Unanimous written Opinion and Order to be issued granting the special exception; appeal period to run from date of written Opinion and Order.

Respectfully submitted,

*Kathleen C. Weidenhammer*  
Kathleen C. Weidenhammer  
Administrative Assistant

BALTIMORE OFFICE  
MERCANTILE BANK & TRUST BUILDING  
2 HOPKINS PLAZA  
9TH FLOOR  
BALTIMORE, MARYLAND 21201  
410-536-3700  
TELECOPIER 410-625-9050

LAW OFFICES  
LEVIN & GANN  
A PROFESSIONAL ASSOCIATION  
305 W. CHESAPEAKE AVENUE  
TOWSON, MARYLAND 21204  
410-321-0600  
TELECOPIER 410-296-2801

ELIS LEVIN (1893-1980)

HOWARD L. ALDERMAN, JR.

October 7, 1993

## HAND DELIVERED

Arnold Jablon, Director  
Office of Zoning Administration and  
Development Management  
111 West Chesapeake Avenue  
Room 109  
Towson, MD 21204

RE: Appeal of Zoning Commissioner's Decision  
Case No. 93-427-X  
Date of Decision: September 10, 1993

Dear Mr. Jablon:

On behalf of our client, Lyons Mill Partnership, please note an appeal of the above-referenced decision of the Zoning Commissioner for Baltimore County to the County Board of Appeals. Lyons Mill Partnership appeared through and was represented by its legal counsel at the hearing before the Zoning Commissioner and is aggrieved by the September 10, 1993 decision. This appeal is made pursuant to Baltimore County Code § 26-132(a).

I have enclosed this firm's check in the amount of \$285.00, \$250.00 for the appeal and \$35.00 for the posting of the required sign. Please contact me immediately should you desire any additional information with respect to the appeal noted hereby.

Very truly yours,

*Howard L. Alderman, Jr.*  
Howard L. Alderman, Jr.

RECEIVED BY: \_\_\_\_\_

DATE: \_\_\_\_\_

HLA/gk  
Enclosure  
cc: Lyons Mill Partnership  
G. Scott Barhight, Esquire

MICROFILMED



**BEN DYER ASSOCIATES, INC.**  
Engineers / Surveyors / Planners

**THOMAS A. KIEFFER, ASSOCIATE**  
Maryland Registered Landscape Architect

**POSITION:** Master Planning Section Head, Planning Department, Ben Dyer Associates, Inc.  
**EDUCATION:** Graduated in 1977 from SUNY College of Environmental Sciences and Forestry at Syracuse University, Bachelor of Environmental Sciences (Cum Laude) 1972, and Bachelor of Landscape Architecture (Cum Laude) 1973.  
**EXPERIENCE:** July 1983 thru Present - Ben Dyer Associates, Inc. Responsibilities include land planning for highest and best use, rezoning and special exception, project management, staff management, and testifying as expert witness in land planning and Landscape Architecture.  
June 1981 thru July 1983 - Woodmont Corporation, a division of the Arnold Palmer-Buckley Development Company, Machpelville, Maryland. Position: Principal Landscape Architect/Planner responsible for comprehensive development planning of the 1100-acre Woodmont Recreational Community.  
October 1977 thru June 1981 - Maryland-National Capital Park and Planning Commission, Upper Marlboro, Maryland. Position: Senior Planner responsible for evaluation and design of land development proposals, public works and neighborhood business revitalization projects, review of zoning proposals, coordination of multi-agency reviews, preparation of staff reports and making recommendations to the County Planning Board.  
September 1974 thru June 1981 - University of Maryland, Institute of Applied Agriculture, College Park, Maryland. Position: Lecturer of Landscape Design (part time).  
October 1975 thru October 1977 - Maryland-National Capital Park and Planning Commission, Community Development Block Grant Program. Position: Landscape Architect responsible for design of site improvements, on-site supervision, and collection of data.  
June 1973 thru October 1975 - Burt Tinsler and Associates, Landscape Architects Site Planners, Chevy Chase, Maryland. Position: Junior Landscape Architect responsible for plan preparation, collection of field data, and technical writing.  
1971-1973 - SUNY College of Environmental Sciences and Forestry Position: Instructor, plant material identification course.  
**EXPERT TESTIMONY:** Expert Witness qualified in Land Planning and Landscape Architecture before the Zoning Hearing Examiner in Prince George's County. One qualified in ZMA-9406 on 10/31/84 and numerous times since then; before the Prince George's County Circuit Court (first qualified in S.H.A. v. Zehner on 11/20/89, and the Howard County Board of Appeals (September 1992).  
**AFFILIATIONS:** Member: Phi Kappa Phi National Honor Fraternity  
Member: American Society of Landscape Architects  
Member: Pr. George's County Chamber of Commerce Legislative Review Committee

MICROFILMED

**BEN DYER ASSOCIATES, INC.**  
Engineers / Surveyors / Planners

**TRANSMITTAL**

**TO:** Office of Zoning Administration and Development Management  
111 West Chesapeake Avenue  
Room 109  
Towson, MD 21204  
**DATE:** June 1, 1993  
**JOB NO.:** 93070  
**JOB NAME:** RAM AT RED ROW  
**WORK ORDER:** 42009

No. Copies	Drawing No.	Description
3 originals	-	Petition for Special Exception Forms - signed and filled out
12 prints	47.001-Y	Plan to Accompany Zoning Hearing
3 photocopies	-	Description (sealed)
1 photocopy	NW 10 J	Official Zoning Map (1" = 200')
1 check	-	\$300.00 Filing Fee

**Reason for Sending:** Application for Special Exception review.

**Sent Via:** Mail \_\_\_\_\_ Your Pick Up \_\_\_\_\_ Messenger \_\_\_\_\_ Other Deliver

**BEN DYER ASSOCIATES, INC.**

**BY:** Thomas A. Kieffer  
Thomas A. Kieffer, P.L.A.  
Associate

**cc:** Mike Stripelkie w/enclosure

**PM:** TAX  
**rls**

#435

MICROFILMED

PLEASE PRINT CLEARLY

**PETITIONER(S) SIGN-IN SHEET**

**NAME:** Thomas A. Kieffer  
Michael A. Stripelkie  
**ADDRESS:** 96 Ben Dyer Assoc, Inc., 8100 Professional Pl  
Landover, Md. 20785  
273 Jannetown St, South NJ 07051

93-427-X

PLEASE PRINT CLEARLY

**PROTESTANT(S) SIGN-IN SHEET**

**NAME:** LYONS MILL PARTNERSHIP  
**ADDRESS:** 46 Lehigh & Green, PA  
State 173, Box W, Chase Park, PA 21204  
Towson

D.R. 10.5  
POINT OF BEGINNING  
N37.650  
W54.625

93-427-X

D.R. 10.5  
D.R. 16  
D.R. 5.5  
ZONING MAP NW 10 J  
SCALE 1"=200'  
#435  
MICROFILMED

Judge calling for  
case 93-427-X  
to file in the  
file  
JUDGE  
HEAR  
LAND  
COURT  
- where to transfer  
& submit to  
Court #

VERIFIED  
8-9-93  
Citations Exhibit  
✓ Petitioner Exh #1 - Background to MOBILE DATA  
✓ Petitioner Exh #2 - The RAM MOBILE DATA SERVICE  
✓ Petitioner Exh #3 - Plans for RAM MOBILE (5/93)  
✓ Petitioner Exh #4 - Resume of Dr. Paul  
✓ Petitioner Exh #5 - Environmental Impact Statement  
✓ Petitioner Exh #6 - Transmittal Memo from Robert L. Smith  
✓ Petitioner Exh #7 - Letter from S. Barakat to Eric Lee  
✓ Petitioner Exh #8 - RAM Booklet  
✓ Petitioner Exh #9 - Resume of Thomas A. Kieffer

VERIFIED  
8-9-93  
Case # 93-427-X  
RAM MOBILE  
Protestant's Exhibit

✓ Protest Exh #1 - Site Lease Agreement  
✓ Protest Exh #2 - Drawing of Zoning District  
✓ Protest Exh #3 - Deed of Easement

**Backgrounder**

**What is Mobile Data?**

Just as cellular phones transformed voice communications in the 1980s, RAM Mobile Data's wireless networks are transforming data communications in the 1990s.

Prior to the 1990s, private wireless data networks were used by a few companies that could afford to build their own private networks.

RAM has gone a step further by building state-of-the-art, wireless data networks across the United States that any company can use.

A business venture between RAM Broadcasting and BellSouth, RAM Mobile Data operates wireless data networks utilizing the Mobitex® wireless data technology. With access to RAM's networks, mobile employees can use a portable computer and radio modem to send and receive electronic mail messages and other data and access host computer applications and public information databases.

**The Growing Need for Mobile Data**

With the proliferation of laptop, notebook and palmtop computers, usage of mobile data services is expected to grow dramatically as companies search for new ways to increase productivity and cut costs. A survey by Arthur D. Little, an internationally recognized consulting organization, identifies 3.8 million potential users for wireless data services in the United States alone through the end of the decade. Booz Allen & Hamilton predicts even greater growth, to between 12 and 15 million. BIS Strategic Decisions matches that optimism, predicting that the U.S. wireless data market could reach a whopping \$12 billion by the turn of the century.

**Some Current RAM Applications**

- Point-of-Sale: MasterCard and TransNet use RAM's wireless data service to enable merchants to approve credit cards where dial-up service is not available, such as outdoor stadiums, marinas and even city streets. Credit card authorization is received in just seconds.

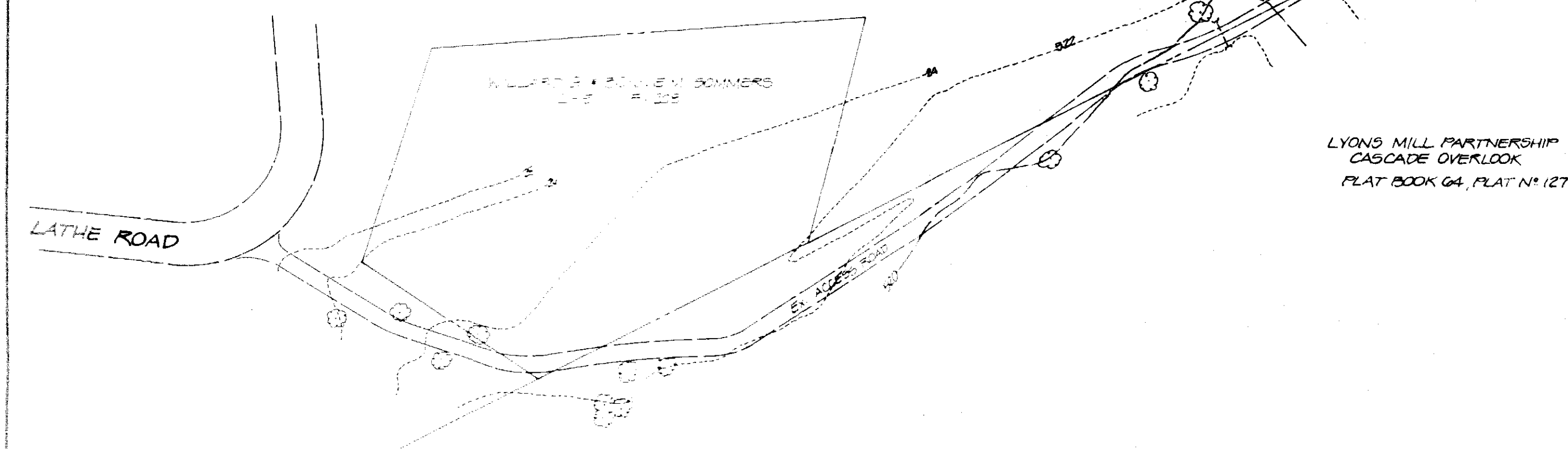
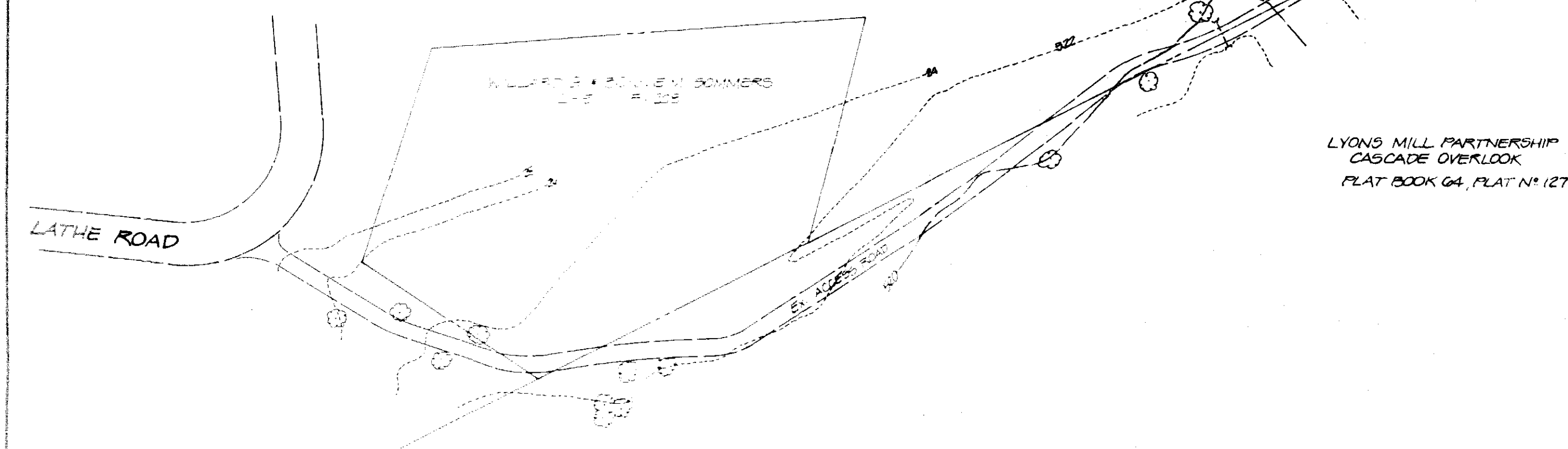
- more -

The RAM Mobile Data Service



Wireless data  
communications and  
RAM Mobile Data.





CHARLES & ELVA M. LATHE  
L-4829/P-014

BALTIMORE COUNTY, MD  
L-5708 / F-08

## NOTES

1. This zoning application is a Petition for Special Exception for a Wireless Transmitting and Receiving Facility as provided for by Section 1801.1.1 - General Use Regulations in D.R. Zones, and Section 502.7 - Wireless Transmitting and Receiving Facilities.
2. The subject property is zoned D.R. 10.8 and appears on Zoning Map NW10J and Tax Map 66, Grid 12.
3. Area of special exception = 33,600 sq. ft. (0.7714 ac.).
4. The proposed development program is for the attachment of three antennas to the top of an existing 400' high tower (total height = 440') and the addition of an 8' x 10' x 10' high equipment building and cable connection near the base of the existing tower, all to be within the existing fenced compound, as shown on the plan.
5. Election District 2; County Council District 3.
6. This site does not lie within the Chesapeake Bay critical area.
7. Research indicates that the special exception area is not subject to any previous commercial permits, zoning hearing decisions, nor C.R.G. approvals.
8. The proposed use, an unmanned communications facility, requires no off-street parking spaces to be provided.
9. The special use requirements of this use are contained in Section 502.7 and are addressed as follows:
  - A. This site is not within one and one-half miles of an existing structure on the Baltimore County Final Historic Landmarks List, nor any of the named historical districts.
  - B. This facility will be mounted to a structure that is 400' high.
  - C. 1. through 5. do not apply because the proposed facility would be mounted on an existing structure over 50' in height.
  - D. 8. through 9. The applicant agrees with the following conditions:
    - Environmental protection agency standards and guidelines relating to radiation emissions shall be met at all times;
    - When the use is terminated, the structure shall be removed;
    - Every five years, or sooner in the event of substantial damage, a certification by a professional engineer registered in Maryland shall be filed with the Department of Permits and Licenses indicating that the aforementioned structure meets all safety requirements. Any upgrading or maintenance required to comply with any changes in the safety requirements, or to maintain the safety thereof, shall be performed prior to the filing of such certification; and
    - No white strobeoscopic lights will be used.
- C. 10. and 11. are not applicable because the tower exists already, i.e. this application is not for a tower.
10. The nonresidential principal building setbacks are exceeded by the proposed limits of the special exception area related to the proposed 8' x 10' equipment building.
11. Site conditions represented taken from Remote Radio Shelter - Red Run: Site Plan & Setback Control Plan prepared by STV Engineers and Planners and provided by Baltimore County Government (Dwg. No. C-1, latest revision dated 6/21/89); not a field survey.

OWNER: BALTIMORE COUNTY  
12R-188  
COURT HOUSE  
BALTIMORE, MD. 21204



5-28-93

PLAN TO ACCOMPANY ZONING HEARING  
FOR

RAM MOBILE DATA FACILITY  
AT RED RUN

(A.K.A. OWINGS MILLS) 4613 LATHE ROAD  
BALTIMORE COUNTY, MARYLAND

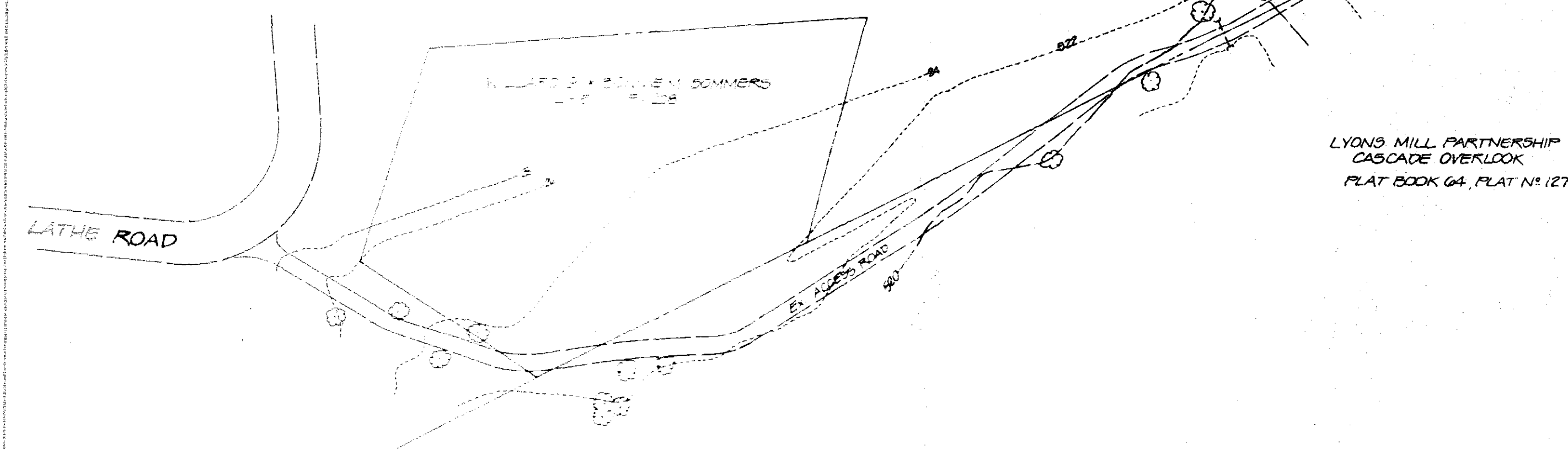
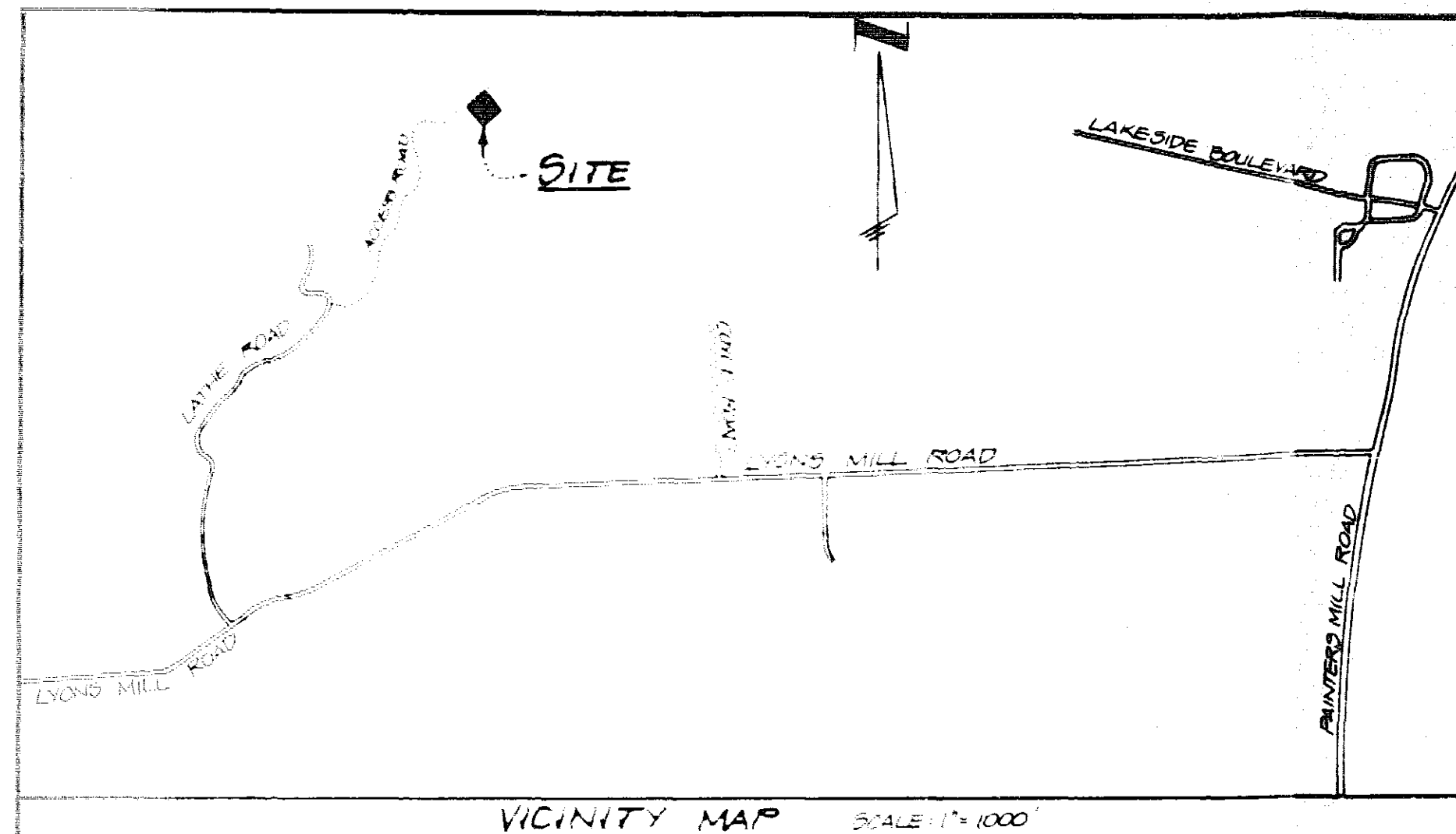
**PETITIONER'S**  
**EXHIBIT** No 1

MICROFILMED

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[illegible]





CHARLES & ELVA M. LATHE  
L-4809, P-04

BALTIMORE COUNTY, MD  
L-5708, P-08

#### NOTES

- The zoning application is a Petition for Special Exception for a Wireless Transceiving and Receiving Facility as provided for by Section 1801.1 - General Use Regulations in D.R. Zones, and Section 502.7 - Wireless Transceiving and Receiving Facilities.
- The subject property is zoned D.R.-10.5 and appears on Zoning Map MW10J and Tax Map 66, Grid 12.
- Area of special exception = 33,800 sq. ft. (0.7714 ac.).
- The proposed development program is for the attachment of a 10' antenna to the top of an existing 400' high tower (total height = 410') and the addition of an 8' x 10' x 10' high equipment building and cable connection near the base of the existing tower, all to be within the existing fenced compound, as shown on this plan.
- Election District 2; County Council District 3.
- This site does not lie within the Chesapeake Bay critical area.
- Research indicates that the special exception area is not subject to any previous commercial permits, zoning hearing decisions, nor C.R.G. approvals.
- The proposed use, an unmanned communications facility, requires no off-street parking spaces be provided.
- The special use requirements of this use are contained in Section 502.7 and are addressed as follows:
  - This site is not within one and one-half miles of an existing district on the Baltimore County Final Historic Landmarks List, nor any of the named historical districts.
  - This facility will be mounted to an existing tower that is 400' high.
  1. through 5. do not apply because the proposed facility would be mounted on an existing structure over 50' in height.
  6. through 9. The applicant agrees with the following conditions:  
Environmental protection agency standards and guidelines relating to radiation emissions shall be met at all times.  
When the use is terminated, the structure shall be removed.  
Every five years, or sooner in the event of substantial damage, a certification by a professional engineer registered in Maryland shall be filed with the Department of Permits and Licenses indicating that the aforementioned structure meets all safety requirements. Any upgrading or maintenance required to comply with any changes in the safety requirements, or to maintain the safety thereof, shall be performed prior to the filing of such certification; and  
No white strobeoscopic lights will be used.
  10. and 11. are not applicable because the tower exists already, i.e. this application is not for a tower.
- The nonresidential principal building setbacks are exceeded by the proposed limits of the special exception area related to the proposed 8' x 10' equipment building.
- Site conditions represented taken from Remote Radio Shelter-Red Run: Site Plan & Sediment Control Plan prepared by STV Engineers Planners and provided by Baltimore County Government (Dwg. No. C-1, latest revision dated 6/21/88); not a field survey.

OWNER: BALTIMORE COUNTY  
128-100  
COURT HOUSE  
BALTIMORE, MD 21204



5-28-93

DATE		DESCRIPTION		BY	
DATE		REVISIONS		DATE	
ONE METRO PLAZA 300 PROFESSIONAL PLACE, LANDOVER, MARYLAND 20785 <b>BEN DYER ASSOCIATES, INC.</b> Engineers / Surveyors / Planners TELEPHONE (301) 459-9200					
DRAWN BY RJD		CHECKED BY RJD		RECORD NO. 93070	
SCALE 1" = 50'		DATE MAY 1993		DRAWN BY 47 001 Y	

93-427-X

PLAN TO ACCOMPANY ZONING HEARING  
FOR  
**RAM MOBILE DATA FACILITY  
AT RED RUN**  
(A.K.A. OWINGS MILLS) 4613 LATHE ROAD  
BALTIMORE COUNTY, MARYLAND

MICROFILMED

#435

73

THIS PRINT MADE MAY 28 1993





**Frank W. Pine, Ph.D.**  
Senior Project Manager  
Resource Management and Planning  
Environmental Assessment and Management Group

Dr. Pine is a Senior Project Manager and marketing coordinator for Resource Management and Planning in the Mid-Atlantic Region for Environmental Assessment and Management Group projects. His graduate level training was in ecology and animal behavior with emphasis on environmental biology and public health. He is responsible for designing and reviewing terrestrial and wetland research and for writing scopes of work and cost proposals dealing with these disciplines. He also guides proposal writing and costing for the Environmental Assessment and Management Group and in the Mid-Atlantic Region, carries out marketing in a number of areas, manages projects, and reviews study plans and reports to ensure proper completion of contracted studies. He assists in training and quality control review for real property environmental site assessments nationwide. His experience includes environmental impact assessments, aerial photographic surveying and mapping, landscape and community structure analyses, and quantitative assessment of environmental effects. Dr. Pine has defined the potential effects of disturbances on rare, threatened, or endangered species and on sensitive communities and is experienced in the detailed analysis of repetitive and natural communities and the impacts resulting from development and highway construction and from tunnel construction, both highway and rail.

#### Education:

Ph.D. The Johns Hopkins University, School of Hygiene and Public Health, Baltimore, Maryland, Ecology and Animal Behavior, Environmental Toxicology, Invertebrate Pathology, 1980  
Advanced Education Certification, Johns Hopkins University, 1974  
B.S. Kenyon College, Biology, 1964

#### Training:

Lotus 1.2.3 Computer Training-Pennsylvania State University, 1992  
EA Project Management Training, 1991  
Associate Course Instructor, 1991-1992  
Hazardous Waste Site Supervisor Course, 1992  
Hazardous Waste Operations Safety Training Course, 1991, Update, 1992  
First Aid/CPR Training Course, 1993  
Seminar and workshop series on personnel and project management, 1996  
American Graduate University-Short course: Proposal preparation and source selection, 1980

#### Experience:

**Environmental Assessments**-Directed multidisciplinary studies to support Environmental Impact Statements for federally funded highway planning in Maryland. Conducted air quality and noise impact studies, natural environmental surveys and socioeconomic studies, special 4.0 studies, and archaeological surveys. Studies were conducted in performance with state and federal agency requirements. Coordinated studies with the U.S. Fish and Wildlife Service, the U.S. Army Corps of Engineers, and the U.S. Environmental Protection Agency. Provided coordination of public information meetings and hearing support. Natural Resource issues included U.S. COE 404 permit application for non-deal wetland issues involving coordination



### ENVIRONMENTAL IMPACT STATEMENT FOR RAM MOBILE DATA'S PROPOSED

#### MOBILE DATA FACILITY AT RED RUN BALTIMORE COUNTY, MARYLAND

#### Prepared for:

RAM Mobile Data  
10 Woodbridge Center Drive, Suite 950  
Woodbridge, New Jersey 07095

#### Prepared by:

EA Engineering, Science, and Technology  
15 Loveton Circle  
Sparks, Maryland 21152

August 1993

EA Project 12669.01

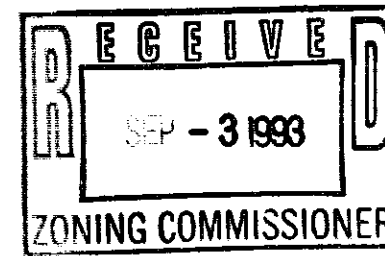


BALTIMORE COUNTY

TRANSMITTAL  
MEMO

TO: Larry Schmidt, Zoning Commissioner  
FROM: Steve Reekie, DEPRM, 3775  
DATE: 9/3/93  
SUBJECT: RAM MOBILE ENVIRONMENTAL IMPACT STATEMENT

These environmental impact statements are well prepared and have addressed all of our concerns. We have no problem with these installations.



LAW OFFICES  
WHITEFORD, TAYLOR & PRESTON

SUITE 400  
500 COURT TOWERS  
210 WEST PENNSYLVANIA AVENUE  
TOWSON, MARYLAND 21204-4515  
410-852-2000  
FAX: 410-852-3013

G. SCOTT BARNHIGHT  
DIRECT NUMBER  
410-852-3013

August 27, 1993

HAND DELIVERED  
Lawrence E. Schmidt, Esquire  
Zoning Commissioner  
Office of Planning and Zoning  
Suite 113 Courthouse  
400 Washington Avenue  
Towson, MD 21204

RE: Petition for Special Exception  
Case No. 93-427-X  
Property: 4613 Lath Road  
Legal Owner: Baltimore County  
Contract Purchaser: Ram Mobile Data USA Ltd. Partnership

Dear Mr. Schmidt:

Enclosed is an Environmental Impact Statement for the proposed Ram Mobile Data facility at the above location consistent with your order dated July 29, 1993. If I can be of any additional assistance, please feel free to contact me.

Thank you for your kind attention to this matter.

Sincerely,

G. Scott Barnhight

GSB:aes

Enclosure

cc: Howard Alderman, Jr., Esquire, attorney for Protestant  
(w/ copy of enclosures)  
Thomas A. Kieffer  
Mr. Michael A. Stripeikis  
Jonathan Swiss, Esquire

### SITE LEASE AGREEMENT

This Site Lease Agreement ("Lease") is entered into this 23rd day of August, 1993 between Baltimore County, Maryland, a body corporate and politic ("Lessor") and RAM Mobile Data USA Limited Partnership ("Lessee").

For good and valuable consideration, the parties hereto agree as follows:

1. **Premises.** Lessor is the owner of a telecommunications tower ("Tower") and an equipment shelter ("Shelter") located on a parcel of land ("Land") as depicted on Exhibit A annexed hereto. The Tower and Shelter and the Land are collectively the "Premises". Lessee leases to Lessee space on the Land and space upon the Tower (collectively, the "Premises") in such amount and in such locations as described on Exhibit B annexed hereto, subject to the terms and conditions of this Lease.

2. **Use.** The Premises shall be used by Lessee for the transmission and reception of radio communication signals on various frequencies and for the installation, maintenance and operation of necessary facilities, including but not limited to, transmitters and antennas. Lessee will obtain all its expense any license, permit or other approval required for Lessee's use of the Premises including but not limited to, any approvals as may be required from the Baltimore County Office of Planning and Zoning and the Zoning Commissioner of Baltimore County covering the intended use and construction of the Lessee Facilities as herein defined. Lessee will cooperate with Lessor in this regard by executing such documentation as Lessor may reasonably request.

3. **Term.** This Lease shall be for an initial period of five (5) years ("Initial Term"), commencing on the date which is the earlier of (i) the first day of the month immediately following the commencement of the installation of the Lessee Facilities as defined in Paragraph 6 of this Lease or (ii) May 1, 1993 ("Commencement Date"). Lessee shall have the right to extend the Initial Term for one (1) successive five (5) year period ("Renewal Term") on the terms and conditions set forth herein. This Lease shall automatically be extended for any successive Renewal Term unless Lessee notifies Lessor not less than ninety (90) days prior to the expiration of the Initial Term of Lessee's intention not to renew.

#### 4. Rent.

(a) For the Initial Term, Lessee shall pay Lessor as rent One Thousand Four Hundred Dollars (\$1,400.00) per month, exclusive of electricity. Rent shall be payable on the first day of each month in advance at the address set forth in Paragraph 13. Said rent is allocated as follows: (i) Eight Hundred Dollars (\$800.00) per month for use of ground space for Lessee's shelter to house its radio equipment and for use of ground space for its monthly generator as provided herein; (ii) Four Hundred Dollars (\$400.00) per month for use of the Tower space to mount two (2) antennas and two (2) cables (at Two Hundred Dollars (\$200.00) for each antenna/cable) as herein provided; and (iii) Two Hundred Dollars (\$200.00) per month for the right to broadcast on two (2) channels (at One Hundred Dollars (\$100.00) per channel), each channel having one (1) receive and one (1) transmit frequency, as herein provided.

(b) Beginning with the first anniversary of the Commencement Date of this Lease (Second Lease Year), and upon each successive anniversary thereof, the annual rental shall be adjusted upward over the amount prevailing during the preceding year by the percent (%) or by any increase in the consumer Price Index for Urban Wage Earners, Washington, D.C., all items (CPI-U), all items (1982=100), whichever amount is greater.

(c) If this Lease is terminated prior to its expiration, rent shall be prorated to the date of termination.

(d) Lessee shall have a separate electric meter to measure Lessee's electric consumption, and Lessee shall pay directly to the public utility company for the installation of the meter and for any electricity used by the Lessee Facilities as herein defined.

#### 5. Interference.

(a) Lessee shall operate the Lessee Facilities as defined in Paragraph 6 in a manner that will not cause interference to Lessor and other lessees of the communications site, provided that their installation practices the Lessee Facilities. All operations by Lessee shall be lawful and in compliance with all FCC requirements.

(b) Subsequent to the installation of the Lessee Facilities, Lessor shall not permit its lessees or licensees to install new equipment on the Property if such equipment is likely to cause interference with Lessee's operations. Such interference shall be deemed a material breach by Lessor. In the event any such interference occurs and does not cease promptly, Lessee shall have the right, in addition to any other rights that it may have at law or in equity, to terminate this Lease.

#### 6. Improvements; Liability; Utilities; Access.

(a) Subject to 6(b) below, Lessee has the right to erect, maintain and operate on the Premises radio communications facilities, including, but not limited to, transmitters and receivers and all related equipment, radio transmitting and receiving antennas and supporting structures thereon and an equipment shelter ("Lessee Facilities"). In connection therewith, Lessee has the right to do all work necessary to prepare, install and alter the Premises for Lessee's business operations and to install transmission lines, connecting the antennas to the transmitters and receivers. All of Lessee's installation work shall be performed at Lessee's sole cost and expense and in a good and workmanlike manner in accordance with Lessee's specifications. Installation and maintenance of Lessee Facilities shall not interfere or work in a good and workmanlike manner, and in such a manner as to not interfere with the operations, including the physical or electrical performance, or the characteristics of Lessor's equipment, or Lessor's operations. Any work (modification, inspection, additional construction) the Lessee wishes to perform on or about the Tower may be subject to the Tower may be performed when the Lessee's workmen or contractors are accompanied by County Electronic Services Division (CESD) technicians. The Lessee will give the Lessor sufficient advance notice as is reasonable under the circumstances to schedule and technicians) and the Division (CESD) technicians. The Lessee shall be subject to the Lessee's reasonable discretion. Title to the Lessee Facilities shall be in Lessee. Lessee has the right to remove all Lessee Facilities at its sole expense at or before the expiration or earlier termination of the term, provided Lessee repairs any damage to the Premises caused by such removal. Any removal shall be done under supervision by the Lessor as a safeguard against damage to the Tower. After the removal is complete, the Lessor at its expense will have an independent third party perform a Tower inspection with particular emphasis toward any damage caused by the removal of said equipment. The Lessee will be responsible for the repair of any such damage.

(b) Subject to 6(b) below, Lessee has the right to install utilities to service the Lessee Facilities (including, but not limited to, a standby power generator for Lessee's exclusive use at a location on the Property acceptable to both parties).

(c) Lessor shall provide to Lessee, Lessee's employees, agents and subcontractors access over the Property to the Premises 24 hours a day, 7 days a week, at no charge to Lessee.

(d) Lessee shall proceed with any alterations to the Premises in accordance with the following schedule:

(i) A detailed engineering analysis will be performed at the expense of the Lessee, with particular emphasis on, but not limited to, an RF Intermodulation Interference analysis for all frequencies currently being used by the Lessee, against the proposed frequencies to be used now or in the foreseeable future by the Lessee. This analysis will show the results of all intermodulation products up to and including the seventh (7th) order. The Lessee must bear the complete cost to correct any interference problems which result from the Tower installation of Lessee Facilities as herein indicated.

(ii) An analysis will be conducted by Lessee at its expense to determine if any potential interference will be created by the addition of the Lessee Facilities to home electronic equipment which may surround the Property. Should the analysis determine there is potential for interference to home electronic

March 29, 1993  
DEPRM  
RED RUN PARK

8100 PROFESSIONAL PLACE  
POST OFFICE BOX 140  
LANDOVER, MARYLAND 20785-0400

TELEPHONE 1-301-459-0200  
FAX 1-301-459-4361

### BEN DYER ASSOCIATES, INC.

Engineers / Surveyors / Planners

THOMAS A. KIEFFER, ASSOCIATE  
Maryland Registered Landscape Architect

Master Planning Section Head, Planning Department, Ben Dyer Associates, Inc.

EDUCATION: Graduated in 1973 from SUNY College of Environmental Sciences and Forestry at Syracuse University, Bachelor of Environmental Sciences (Cum Laude) 1972, and Bachelor of Landscape Architecture Cum Laude 1973.

EXPERIENCE: July 1983 thru Present - Ben Dyer Associates, Inc. Responsibilities include land planning for highest and best use, including, but not limited to, project management, staff management, and working as project witness in land planning and Landscape Architecture.

June 1981 thru July 1983 - Woodmont Corporation, a division of the Arnold Palmer-Buckley Development Company, Mineville, Maryland. Position: Principal Landscape Architect/Planner responsible for comprehensive development planning of the 1,000 acre Woodmont Recreational Community.

October 1977 thru June 1981 - Maryland-National Capital Park and Planning Commission, Upper MacKays, Maryland. Position: Senior Planner responsible for evaluation and design of land development proposals, public works and neighborhood business revitalization projects, review of zoning proposals, coordination of multi-agency reviews, preparation of staff reports and making recommendations to the County Planning Board.

September 1976 thru June 1981 - University of Maryland, Institute of Applied Agriculture, College Park, Maryland. Position: Lecturer of Landscape Design (part time).

October 1975 thru October 1977 - Maryland-National Capital Park and Planning Commission, Community Development Block Grant Program. Position: Landscape Architect responsible for design of the improvements, on-site supervision, and collection of data.

June 1973 thru October 1975 - Boris Turchenko and Associates, Landscape Architects Site Planners, Chevy Chase, Maryland. Position: Junior Landscape Architect responsible for plan preparation, collection of field data, and technical writing.

1971-1973 - SUNY College of Environmental Sciences and Forestry Position: Instructor, plant material identification courses.

Expert Witness qualified in Land Planning and Landscape Architecture before the Zoning Hearing Examiner in Prince George's County (first qualified in 10/31/84, and numerous times since then); before the Prince George's County Circuit Court (first qualified in 5/14/84, and the Howard County Board of Appeals (September, 1992).

AFFILIATIONS: Member: Phi Kappa Phi National Honor Fraternity  
Member: American Society of Landscape Architects  
Member: Prince George's County Chamber of Commerce; Legislative Review Committee

RAM  
COMMUNICATIONS  
CONSULTANTS, INC.





LIBER 10060 PAGE 709

RW 93-283-1,-2,-3,-4  
J.O. "0"  
Item 1 (E)

THIS DEED OF EASEMENT AND AGREEMENT, Made this 5<sup>th</sup> day of  
**October**, in the year 1993, between LYONS MILL PARTNERSHIP, a General  
Partnership organized under the laws of the State of Maryland, hereinafter  
called "Partnership", party of the first part; and CHARLES CRANE, Mortgagee,  
party of the second part; and BALTIMORE COUNTY, MARYLAND, a body corporate  
and politic, hereinafter called "Baltimore County", party of the third part.

WHEREAS, Baltimore County is the owner of a tract of land in Baltimore  
County, Maryland, described in Exhibit "A", attached hereto and made a part  
hereof, on which it operates an emergency communication system from an  
Antenna Communication Tower known as the Red Run Tower Site - Remote Site  
No. 8 located on the Antenna Site (the "Antenna"), and

WHEREAS, the Partnership is the owner of the tract of land in Baltimore  
County, Maryland known as Cascades Overlook Subdivision as recorded among  
the Plat Records of Baltimore County in Plat Book S.M. 64, folio 126 (the  
"Property") on which it will construct and operate apartment and condominium  
residences, and

WHEREAS, The Partnership desires to grant unto Baltimore County a  
certain easement for certain purposes as more fully set forth below on the  
terms and conditions herein set forth.

NOW, THEREFORE, THIS DEED OF EASEMENT AND AGREEMENT WITNESSETH that in  
consideration of the mutual promises and covenants herein contained the  
Partnership grants and conveys unto Baltimore County, its successors and  
assigns, an access easement of ingress and egress containing 1.5514 acres  
(67,579.67 sq. ft.), more or less, across the Property from the entrance on

ACRICULTURE TRANSFER TAX  
NOT APPLICABLE  
SIGNATURE LA DATE 06/03

RECEIVED FOR TRANSFER  
State Department of  
Assessments & Taxation  
for Baltimore County  
By LA Date 11/16/93

## ORIGINAL

1 IN THE MATTER OF \* BEFORE THE  
2 THE PETITION OF \* COUNTY BOARD OF APPEALS  
3 RAM MIBILE DATA USA LTD. \* OF BALTIMORE COUNTY  
4 PARTNERSHIP For a Special \* Case No. 93-427-A  
5 Exception On Property \* February 8, 1994  
6 Located On The East Side \*  
7 Lathe Road 3,029' southeast \*  
8 Of The Centerline Of \*  
9 Dolefield and Watts Road \*  
10 2nd Election District \*  
11 3rd Councilmanic District \*

12 \* \* \* \* \*  
13 The above-entitled matter came on for hearing  
14 before the County Board of Appeals of Baltimore County in  
15 Hearing Room 48, Old Courthouse, 400 Washington Avenue,  
16 Towson, Maryland 21204, at 10 o'clock a.m., February 8,  
17 1994.

18 \* \* \* \* \*  
19  
20 Reported by:  
21 C.E. Peatt

BOARD OF APPEALS



PETITION OF LYONS MILL PARTNERSHIP, ET AL  
Civil Action No. 94CV6991 87/275  
Agency Case No. 93-427-X

VS.

Notice

Pursuant to Maryland Rule 7-206(c), you are advised that the Record of Proceedings was filed on September 23, 1994

*August 23, 1994*  
Clark

Date mailed: September 23, 1994

Copy to: HOWARD L. ALDERMAN, JR.  
CHARLOTTE E. RADCLIFFE

FILED SEP 23 1994

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY  
PETITION OF LYONS MILL PARTNERSHIP  
C/O DAVID S. BROWN ENTERPRISES  
9183 Reisterstown Road  
Owings Mills, MD 21117  
FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY  
Room 49, Old Courthouse, 400 Washington Avenue, Towson, MD 21204  
IN THE CASE OF: IN THE MATTER OF RAM MOBILE DATA USA LTD. PARTNERSHIP FOR A SPECIAL EXCEPTION ON PROPERTY LOCATED ON THE EAST SIDE OF LATHE ROAD 3,029' SOUTHEAST OF THE CENTERLINE OF DOLEFIELD AND WATTS ROAD (4613 LATHE ROAD)  
2ND ELECTION DISTRICT  
3RD COUNCILMANIC DISTRICT  
CASE NO. 93-427-X  
CIVIL ACTION  
No. 94-CV-06991  
87/275

PROCEEDINGS BEFORE THE ZONING COMMISSIONER AND THE BOARD OF APPEALS OF BALTIMORE COUNTY

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come William T. Hackett, Harry E. Buchheister, Jr., Judson H. Lipowitz, constituting the County Board of Appeals of Baltimore County, and in answer to the Petition for Judicial Review directed against them in this case, herewith return the record of proceedings had in the above-entitled matter, consisting of the following certified copies or original papers on file in the Office of Zoning Administration and Development Management and the Board of Appeals of Baltimore County:

ENTRIES FROM THE DOCKET OF THE BOARD OF APPEALS AND OFFICE OF ZONING ADMINISTRATION AND DEVELOPMENT MANAGEMENT OF BALTIMORE COUNTY

93-427-X, Ram Mobile Data USA Ltd. Partnership  
File No. 87/275/ 94-CV-06991  
2  
No. 93-427-X  
June 1, 1993 - Petition for Special Exception for a wireless transmitting and receiving facility filed by Baltimore County as property owner and Jonathan Swiss, Esquire on behalf of Ram Mobile Data USA Ltd. Partnership ("Ram Mobile") as lessee.  
June 13 - Certificate of Posting of property.  
June 17 - Publication in newspapers.  
July 6 - Hearing held on Petition by the Zoning Commissioner.  
Memorandum Opinion of the Zoning Commissioner in which filing of Petition for Special Exception was determined to be incomplete (decision to be rendered on Petition upon submittal of environmental impact statement).  
September 10 - Order of the Zoning Commissioner in which Petition for Special Exception was GRANTED.  
October 17 - Notice of Appeal filed by Howard L. Alderman, Jr., Esquire on behalf of Lyons Mill Partnership.  
February 8, 1994 - Hearing before the Board of Appeals. (Deliberation at conclusion of hearing)  
July 13 - Opinion and Order of the Board in which the Petition for Special Exception was GRANTED.  
July 28 - Petition for Judicial Review filed in the Circuit Court for Baltimore County by Julius W. Lichter, Esquire and Howard L. Alderman, Jr., Esquire, on behalf of Lyons Mill Partnership.  
August 8 - Copy of Petition for Judicial Review received by the Board of Appeals from the Circuit Court for Baltimore County.  
August 9 - Certificate of Notice sent to interested parties.  
Transcript of testimony filed.

93-427-X, Ram Mobile Data USA Ltd. Partnership  
File No. 87/275/ 94-CV-06991  
3  
Petitioner's Exhibits No. 1 -Background to Mobile Data  
2 -The Ram Mobile Data Service Pamphlet  
3 -Plans for Ram Mobile (5/1993)  
4 -Resume of Dr. Pine  
5 -Environmental Impact Statement  
6 -Transmittal Memo from Reekie to Schmidt  
7 -Letter from S. Barhight to Zoning Commissioner  
8 -RAM Booklet  
9 -Resume of Thomas A. Kieffer  
Protestant's Exhibit No. 1 -Site Lease Agreement  
2 -Drawing of Lyon's Devel.  
3 -Deed of Easement

Record of Proceedings filed in the Circuit Court for Baltimore County.  
Record of Proceedings pursuant to which said Order was entered and upon which said Board acted are hereby forwarded to the Court, together with exhibits entered into evidence before the Board.

Respectfully submitted,  
*Charlotte E. Radcliffe*  
Charlotte E. Radcliffe, Legal Secretary  
County Board of Appeals of Baltimore County, Room 49, Basement - Old Courthouse  
400 Washington Avenue  
Towson, MD 21204 (410) 887-3180

cc: Julius W. Lichter, Esquire  
Howard L. Alderman, Jr.  
G. Scott Barhight  
People's Counsel for Baltimore County

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY  
PETITION OF LYONS MILL PARTNERSHIP  
C/O DAVID S. BROWN ENTERPRISES  
9183 Reisterstown Road  
Owings Mills, MD 21117  
FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY  
Room 49, Old Courthouse, 400 Washington Avenue, Towson, MD 21204  
IN THE CASE OF: IN THE MATTER OF RAM MOBILE DATA USA LTD. PARTNERSHIP FOR A SPECIAL EXCEPTION ON PROPERTY LOCATED ON THE EAST SIDE OF LATHE ROAD 3,029' SOUTHEAST OF THE CENTERLINE OF DOLEFIELD AND WATTS ROAD (4613 LATHE ROAD)  
2ND ELECTION DISTRICT  
3RD COUNCILMANIC DISTRICT  
CASE NO. 93-427-X  
CIVIL ACTION  
No. 94-CV-06991  
87/275

CERTIFICATE OF NOTICE

Madam Clerk:

Pursuant to the provisions of Rule 7-202(e) of the Maryland Rules of Procedure, William T. Hackett, Harry E. Buchheister, Jr., and Judson H. Lipowitz, constituting the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the Petition for Judicial Review to the representative of every party to the proceeding before it; namely, Julius W. Lichter, Esquire and Howard L. Alderman, Jr., Esquire, LEVIN & GANN, P.A., 305 West Chesapeake Avenue, Suite 113, Towson, MD 21204, Counsel for Petitioner; Lyons Mill Partnership, c/o David S. Brown Enterprises, 9183 Reisterstown Road, Owings Mills, MD 21117, Petitioner; Ram Mobile Data USA Ltd. Partnership, 10 Woodbridge Center Drive, Woodbridge NJ 07095; G. Scott Barhight, Esquire, WHITEFORD, TAYLOR AND PRESTON, 500 Court Towers, 210 W. Pennsylvania Avenue, Towson, MD 21204, Counsel for Ram Mobile Data; Peter Max Zimmerman, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, Room 47, Washington Avenue, Towson, MD 21204; a copy of which Notice is attached hereto and

93-427-X, Ram Mobile Data USA Ltd. Partnership  
File No. 94-CV-06991/87/275  
2

prayed that it may be made a part hereof.

*Charlotte E. Radcliffe*  
Charlotte E. Radcliffe, Legal Secretary  
County Board of Appeals, Room 49 - Basement  
Old Courthouse, 400 Washington Avenue  
Towson, MD 21204 (410) 887-3180

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to Julius W. Lichter, Esquire and Howard L. Alderman, Jr., Esquire, LEVIN & GANN, P.A., 305 West Chesapeake Avenue, Suite 113, Towson, Maryland 21204, Counsel for Petitioner; Lyons Mill Partnership, c/o David S. Brown Enterprises, 9183 Reisterstown Road, Owings Mills, MD 21117, Petitioner; Ram Mobile Data USA Ltd. Partnership, 10 Woodbridge Center Drive, Woodbridge NJ 07095; G. Scott Barhight, Esquire, WHITEFORD, TAYLOR AND PRESTON, 500 Court Towers, 210 W. Pennsylvania Avenue, Towson, MD 21204, Counsel for Ram Mobile Data USA Ltd. Partnership; Peter Max Zimmerman, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, Room 47, Washington Avenue, Towson, Maryland 21204, this 9th day of August, 1994.

*Charlotte E. Radcliffe*  
Charlotte E. Radcliffe, Legal Secretary  
County Board of Appeals, Room 49 - Basement  
Old Courthouse, 400 Washington Avenue  
Towson, MD 21204 (410) 887-3180

County Board of Appeals of Baltimore County  
OLD COURTHOUSE, ROOM 49  
400 WASHINGTON AVENUE  
TOWSON, MARYLAND 21204  
(410) 887-3180

August 9, 1994

Julius W. Lichter, Esquire  
Howard L. Alderman, Jr., Esquire  
LEVIN & GANN, P.A.  
305 W. Chesapeake Avenue  
Towson, MD 21204

RE: Civil Action No. 94-CV-06991  
RAM MOBILE DATA USE LTD PARTNERSHIP

Dear Counsel:

In accordance with Rule 7-206(c) of the Maryland Rules of Procedure, the County Board of Appeals is required to submit the record of proceedings of the petition for judicial review which you have taken to the Circuit Court for Baltimore County in the above-entitled matter within sixty days.

The cost of the transcript of the record must be paid by you. In addition, all costs incurred for certified copies of other documents necessary for the completion of the record must also be at your expense.

The cost of the transcript, plus any other documents, must be paid in time to transmit the same to the Circuit Court within sixty days, in accordance with Rule 7-206(c).

Enclosed is a copy of the Certificate of Notice which has been filed in the Circuit Court.

Very truly yours,

*Charlotte E. Radcliffe*  
Charlotte E. Radcliffe  
Legal Secretary

Enclosure

cc: Lyons Mill Partnership  
c/o David S. Brown Enterprises

County Board of Appeals of Baltimore County  
OLD COURTHOUSE, ROOM 49  
400 WASHINGTON AVENUE  
TOWSON, MARYLAND 21204  
(410) 887-3180

August 9, 1994

G. Scott Barhight, Esquire  
WHITEFORD, TAYLOR & PRESTON  
500 Court Towers  
210 W. Pennsylvania Avenue  
Towson, MD 21204-4515

RE: Civil Action No. 94-CV-06991  
RAM MOBILE DATA USA LTD PARTNERSHIP

Dear Mr. Barhight:

Notice is hereby given, in accordance with the Maryland Rules of Procedure, that a Petition for Judicial Review was filed on April 15, 1994 in the Circuit Court for Baltimore County from the majority decision of the County Board of Appeals rendered in the above matter. Any party wishing to oppose the petition must file a response within 30 days after the date of this letter, pursuant to Rule 7-202(d)(2)(B).

Please note that any documents filed in this matter, including, but not limited to, any other Petition for Judicial Review, must be filed under Civil Action No. 87/275/94-CV-06991.

Enclosed is a copy of the Certificate of Notice, which has been filed in the Circuit Court.

Very truly yours,

*Charlotte E. Radcliffe*  
Charlotte E. Radcliffe  
Legal Secretary

Enclosure

cc: Ram Mobile Data USA Ltd. Partnership  
Mr. Thomas A. Kieffer /Ben Dyer Assoc., Inc.  
Mr. Michael A. Stripeikis  
Jonathan Swiss, Esquire  
People's Counsel for Baltimore County  
Pat Keller /Planning  
Lawrence E. Schmidt /ZADM  
W. Carl Richards /ZADM  
Arnold Jablon /ZADM  
Timothy M. Kotroco /ZADM  
Docket Clerk /ZADM



PETITION OF: Lyons Mill Partnership  
c/o David S. Brown Enterprises  
9183 Reisterstown Road  
Owings Mills, MD 21117

CIVIL  
ACTION

FOR JUDICIAL REVIEW OF THE DECISION OF THE:

County Board of Appeals for Baltimore County  
Room 49, Basement  
Old Court House  
400 Washington Avenue  
Towson, MD 21204

IN THE CASE OF: RAM MOBILE DATA USA LTD.  
PARTNERSHIP - Special Exception  
(4613 Lathe Rd.)

Case No. 93-427-X

Lyons Mill Partnership, Appellant and party in the above-referenced case, by Julius W. Lichter and Howard L. Alderman, Jr., its legal counsel, in accordance with Maryland Rule 7-202 hereby requests judicial review of the July 13, 1994 decision of the County Board of Appeals for Baltimore County in the above-captioned matter.

*Julius W. Lichter*  
Julius W. Lichter  
*Howard L. Alderman, Jr.*  
Howard L. Alderman, Jr.  
LEVIN & GANN, P.A.  
305 West Chesapeake Avenue  
Suite 113  
Towson, Maryland 21204  
(410) 321-0800

Attorney for Petitioner Appellant

RECEIVED AND FILED  
26 JUL 28 PM 2:45

CIRCUIT COURT FOR BALTIMORE COUNTY

IN THE MATTER OF THE  
PETITION OF  
RAM MOBILE DATA USA LTD. PARTNERSHIP  
FOR A SPECIAL EXCEPTION  
ON PROPERTY LOCATED  
ON THE EAST SIDE OF LATHE ROAD  
3,029' SOUTHEAST OF THE CENTERLINE  
OF DOLEFIELD AND WATTS ROAD  
(4613 LATHE ROAD)  
2ND ELECTION DISTRICT  
3RD COUNCILMANIC DISTRICT

\* BEFORE THE  
\* COUNTY BOARD  
\* OF APPEALS  
\* OF  
\* BALTIMORE COUNTY  
\* Case No.: 93-427-X

# OPINION

This case comes before the Board on appeal from a decision of the Zoning Commissioner dated September 10, 1993, granting a Special Exception for a wireless transmitting and receiving facility to be operated by the Petitioner on property owned by Baltimore County, Maryland. The Board hearing in this case was de novo.

The Petitioner, Ram Mobile Data USA Ltd. Partnership, presented testimony from three of its employees, namely, Michael A. Stripeikis, a construction engineer, Frank W. Pine, Ph.D., an environmental scientist, and Matthew R. Bedowski, a radio frequency engineer. Additionally, the Petitioner presented testimony from Thomas A. Kieffer, an expert in planning and zoning and landscape architecture associated with Ben Dyer Associates, Inc. Nine exhibits were offered into evidence by the Petitioner.

The Appellant, Lyons Mill Partnership, presented testimony from one witness, namely, Howard S. Brown, a partner of Appellant. Three exhibits were offered into evidence by the Appellant.

From the testimony, evidence and exhibits, the Board finds the following facts:

Case No. 93-427-X Ram Mobile Data

The Petitioner plans to attach a wireless transmitting and receiving facility to an existing communications tower owned by Baltimore County, Maryland. The site measures approximately 150' x 224' and is rectangular in shape. The proposed and existing improvements on the site are shown on Petitioner's Exhibit 3 (Plan to Accompany Zoning Hearing). The existing tower is 400' in height. The site is zoned D.R. 10.5. The proposed improvements include two (2) 12' whip antennae to be attached on top of the existing tower and a 8' x 10' x 10' high equipment shed and cable connectors to be constructed near the base of the existing tower. The proposed private communications facility will be unmanned. Routine maintenance will be performed by Petitioner's personnel approximately monthly. The structure will be enclosed within a locked, chain-link fence. The Petitioner made a diligent search and determined that attaching this communications facility to the subject tower would be most feasible. Access to and from the site is in dispute between parties.

The Special Exception is requested pursuant to Sections 502.1 and 502.7 of the BCZR. The Board reviewed the criteria set forth in both sections and applied the facts of this case. Additionally, the Board reviewed the Court of Appeals case, Glascow v. Baltimore County, Maryland, 321 Md. 118, 581 A.2d 822 (1990), which holds that Baltimore County is not subject to its own zoning regulations.

The Petitioner maintains that the Board should consider only the impact of the proposed private improvements to the site in regard to the subject Petition Special Exception. The Appellant

Case No. 93-427-X Ram Mobile Data

urges the Board to consider the impact of both the proposed private improvements and the existing governmental improvements and property. Based on the holding in Glascow, the Board concludes that the existing governmental land and improvements in this case are exempt from the BCZR. Therefore, only the impact of the proposed private improvements will be considered by the Board at this time.

From the evidence presented, the Board concludes that all of the requirements of Sections 502.1 and 502.7 have been complied with in this case. The Board bases its conclusion on the testimony of Thomas A. Kieffer, Matthew R. Bedowski and Frank W. Pine, Ph.D. and the facts, some of which are summarized below.

The proposed improvements will not tend to create congestion in roads, streets or alleys because the antennae will be attached to an existing tower and the private facility will be unmanned. The proposed facility will not create a potential hazard from fire, panic or other dangers because the shed is to be constructed with fire proof materials and the facility, which will be monitored 24 hours a day, will operate at low voltage levels. The proposed facility will not tend to overcrowd land and cause undue concentration of population because the antennae will be attached to an existing tower and the 8' x 10' equipment shed is relatively small in relation to the overall size of the subject site. Again, the facility will be unmanned. The proposed facility will not interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements.

Case No. 93-427-X Ram Mobile Data

conveniences, or improvements because it will not be served by public water, sewer or transportation and, according to Mr. Bedowski, the private facility will not interfere with the existing governmental communications system. Due to the size of the equipment shed and the two (2) antennae, they will not interfere with adequate light and air. The gravel or stone pavement will not be inconsistent with the impermeable surface and vegetative retention provisions of the BCZR. Based on the Environmental Impact Statement in evidence as Petitioner's Exhibit 5 and testimony from Dr. Pine, the Board concludes that the proposed facility will not be detrimental to the health, safety or general welfare of the locality involved. The Board also gave consideration to the notes on the Plan marked Petitioner's Exhibit 3 and testimony from Mr. Bedowski that the radiation emissions from this facility will not exceed acceptable safety levels or standards.

For these reasons, the Board finds that the proposed private facility will not be detrimental to the health, safety or general welfare of the locality involved and will not be inconsistent with the spirit and intent of the BCZR. Therefore, the Board will grant the Petition for Special Exception.

## ORDER

IT IS THEREFORE this 13th day of July, 1994 by the County Board of Appeals of Baltimore County

ORDERED that the Petition for Special Exception be and is hereby GRANTED, subject, however, to the following restriction:

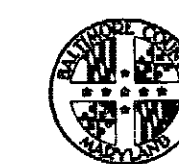
Case No. 93-427-X Ram Mobile Data

The Petitioner is hereby made aware that proceeding at this time is at its own risk until such time as the appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioner would be required to return, and be responsible for returning, said property to its original condition.

Any petition for judicial review from this decision must be made in accordance with Rules 7-201 through 7-210 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS  
OF BALTIMORE COUNTY

*William T. Hackett*  
William T. Hackett, Chairman  
*Harry E. Buchheister, Jr.*  
Harry E. Buchheister, Jr.  
*John H. Lipowitz*  
John H. Lipowitz



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49  
400 WASHINGTON AVENUE  
TOWSON, MARYLAND 21204  
(410) 887-3180

July 13, 1994

Howard L. Alderman, Jr., Esquire  
LEVIN & GANN, P.A.  
Suite 113  
305 W. Chesapeake Avenue  
Towson, MD 21204

RE: Case No. 93-427-X  
RAM Mobile Data USA Ltd. Partnership

Dear Mr. Alderman:

Enclosed please find a copy of the final Opinion and Order issued this date by the County Board of Appeals of Baltimore County in the subject matter.

Very truly yours,  
*Kathleen C. Weidenhamer*  
Kathleen C. Weidenhamer  
Administrative Assistant

encl.

cc: G. Scott Barhight, Esquire  
RAM Mobile Data USA Ltd. Partnership  
Mr. Thomas A. Kieffer /  
Ben Dyer Assoc., Inc.  
Mr. Michael A. Stripeikis  
Jonathan Swiss, Esquire  
People's Counsel for Baltimore County  
Pat Keller  
Lawrence E. Schmidt  
Timothy M. Kotroco  
W. Carl Richards, Jr. /ZADM  
Docket Clerk /ZADM  
Arnold Jablon, Director /ZADM

IN THE MATTER OF  
RAM MOBILE DATA USA LTD.  
PARTNERSHIP (BALTIMORE COUNTY 911  
TOWER; BALTIMORE COUNTY, MD -OWNER)  
EAST SIDE LATHE ROAD, SOUTHEAST OF  
CENTERLINE DOLEFIELD AND WATTS  
ROADS (4613 LATHE ROAD)

RE: ISSUANCE OF TWO BUILDING  
PERMITS B180092 AND B180093

\* BEFORE THE  
\* COUNTY BOARD OF APPEALS  
\* OF BALTIMORE COUNTY  
\* CASE NO. CBA-94-101

## OPINION

Lyons Mill Partnership appeals from the December 27, 1993 letter from John R. Reisinger, Buildings Engineer, informing them that on November 4, 1993, Baltimore County issued two permits to RAM Mobile Data USA Ltd. Partnership. Permit No. B180092 authorizes the erection of two 12-foot antennas on the subject site. Permit No. B180093 authorizes the construction of a storage building at the site.

At the hearing on this matter, Appellee made a Motion to Dismiss the appeal based on the fact that the letter requesting the appeal dated January 4, 1994 was filed more than 30 days following the issuance of the permits on November 4, 1993. After hearing arguments of counsel, the Board denied the Motion.

The parties proceeded by way of stipulation as to the facts and jointly submitted documents. We find from the stipulated facts that the two permits were issued on November 4, 1993, as indicated, in the ordinary course of Baltimore County's business. Appellants offered a deed of easement dated October 8, 1993. Appellees produced the Zoning Commissioner's Opinion in Case No. 93-427-X and two letters concerning it, which Opinion is pending on appeal before this Board.



The Board takes note both from the arguments of counsel and its own knowledge that this Board has publicly deliberated Case No. 93-427-X, at which time it indicated that it would grant the special exception to erect the antenna on top of the public tower for which these two permits have been issued, and also indicated that it would issue findings of fact and a written Order.

Since we believe that the issuance of these two permits is tied to the approval granted by the Zoning Commissioner in special exception 93-427-X, and since our opinion in that case, although publicly made, has yet to be finally issued, we decide today to suspend the operation of Permits No. B180092 and No. B180093 until such time as this Board issues its final decision in Case No. 93-427-X. However, based on the evidence and record before us, we find as a fact that permits B180092 and B180093 have been properly and validly issued by Baltimore County. In the event that this Board affirms the Zoning Commissioner's decision in 93-427-X, we will *sua sponte* deny the appeal in this case and affirm the issuance of the permits. In the event that the Board ultimately reverses or rescinds in some fashion its publicly deliberated decision to affirm 93-427-X, the suspension of these two permits shall remain in effect pending further action of this Board.

## O F F I C E

IT IS THEREFORE, this 10th day of May, 1994 by the County Board of Appeals of Baltimore County

ORDERED that Building Permits No. B180092 and No. B180093 have been validly and properly issued and it is further

ORDERED that said permits shall be and are hereby SUSPENDED, pending issuance of the Board's final decision in Case No. 93-427-X pursuant to the following:

1. In the event this Board grants the special exception in Case No. 93-427-X, the appeal in this case will be denied, and the issuance of the building permits affirmed; or
2. In the event this Board ultimately reverses its publicly deliberated decision in Case No. 93-427-X to grant the special exception, the suspension of these two permits shall remain in effect pending further action of this Board.

COUNTY BOARD OF APPEALS OF  
BALTIMORE COUNTY

William T. Hackett  
William T. Hackett, Chairman  
Robert G. Schuetz  
Robert G. Schuetz  
C. William Clark  
C. William Clark

IN RE: Ram Mobile Data USA Ltd. Partnership  
E/s Lathe Road & 3,029' SE of c/l  
of Dolefield Road and Watts Road  
(4613 Lathe Road)  
2nd Election District  
3rd Councilmanic District

S/E for Wireless Transmitting and Receiving  
Facility to be operated by PRIVATE  
CORPORATION

Baltimore County, Maryland  
and  
RAM Mobile Data USA Ltd. Partnership,  
Petitioners

BEFORE THE  
COUNTY BOARD  
OF  
APPEALS FOR  
BALTIMORE COUNTY  
CASE NO.: 93-427-X

## REQUEST FOR SUBPOENA DUCES TECUM

Please issue a subpoena *duces tecum* for the following named witness and command him to appear at the hearing on the above-referenced matter scheduled before the County Board of Appeals for Baltimore County on Tuesday, February 8, 1994 at 10:00 a.m., in Room 48 of the Old Courthouse, Towson, Maryland, 21204:

Mr. Adon W. Phillips  
Office of Central Services/Property Management Section  
4th Floor - County Courts Building  
401 Bosley Avenue  
Towson, Maryland 21204

The witness should also be directed to bring with him to the Hearing any and all documents, plans, files, leases (including executory, if any), correspondence, policies, directives, records, and any other non-privileged information in his custody, possession or control concerning the access, use, leasing, and occupancy of the subject property by any non-public entity including, but not limited to, Petitioner RAM Mobile Data USA Limited Partnership.

Howard L. Ataman, Jr.  
Clerk, County Board of Appeals for Baltimore County

This subpoena request is made on behalf of the undersigned attorneys for Lyons Mill Partnership. Appellant.

66-16 HY 26-1117-16  
19-9-93  
STILL IN PROCESS  
APPEALS SECTION

Howard L. Ataman, Jr.  
LEVIN & GANN, P.A.  
305 West Chesapeake Avenue  
Suite 113  
Towson, MD 21204  
(410) 321-0600

IN RE: RAM MOBILE DATA USA Ltd. Partnership  
E/s Lathe Road & 3,029' SE of c/l  
of Dolefield Road and Watts Road  
(4613 Lathe Road)  
2nd Election District  
3rd Councilmanic District  
S/E for Wireless Transmitting and  
Receiving Facility to be operated  
by PRIVATE CORPORATION  
Baltimore County, Maryland  
and  
RAM Mobile Data USA Ltd.  
Partnership,  
Petitioners

SERVE ON:

Mr. Adon W. Phillips  
Office of Central Services/  
Property Management Section  
4th Floor - County Courts Building  
401 Bosley Avenue  
Towson, Maryland 21204

## AFFIDAVIT AND RETURN OF PRIVATE PROCESS SERVER

The undersigned hereby certifies as follows:

1. I am a competent person over 18 years of age and not a party to the above action.
2. I served upon Mr. Adon W. Phillips on the 1st of February, 1994 at the Office of Central Services/Property Management Section, 4th Floor - County Courts Building, 401 Bosley Avenue, Towson, Maryland, 21204, by delivering and leaving with the person served a copy of the Subpoena Duces Tecum issued in the above case on February 1, 1993.

94 FEB -1 PM 4:29

3. I do solemnly declare and affirm under the penalties of perjury that the matters and facts set forth herein are true to the best of my knowledge, information, and belief.

Jeffrey Alan Charlow  
Jeffrey Alan Charlow

IN RE: PETITION FOR SPECIAL EXCEPTION  
E/s Lathe Rd. & 3,029' SE of c/l  
of Dolefield Rd. & Watts Rd.  
4613 Lathe Road  
2nd Election District  
3rd Councilmanic District  
Legal Owner: Baltimore County  
Contract Purchaser: Ram Mobile  
Data USA Ltd. Partnership  
Petitioners

BEFORE THE  
ZONING COMMISSIONER  
OF BALTIMORE COUNTY  
CASE No. 93-427-X

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner as a Petition for Special Exception for the property located at 4613 Lathe Road in the Owings Mills section of Baltimore County. The Petition is filed by the property owner, Baltimore County, a body politic, and its lessee, Ram Mobile Data USA Ltd. Partnership (hereinafter "Ram Mobile"). The Petition seeks approval for a wireless transmitting and receiving facility on the subject site, to be operated by a private corporation, Ram Mobile.

This matter came in for a public hearing at which the Petitioner was represented by G. Scott Barhight, Esquire. As a result of the testimony and evidence presented at that hearing, a Memorandum Opinion was issued by this office. That Memorandum Opinion tentatively granted the Petition for Special Exception, but required the Petitioner to submit a written Environmental Impact Statement. An Environmental Impact Statement has been received relative to this project. The Statement, which has been included within the case file as a portion of the record of this case, was prepared by EA Engineering, Science, and Technology.

I have reviewed carefully the Environmental Impact Statement, as well as providing a copy of same to Mr. Steve Reekie of the Department of Environmental Protection and Resource Management for Baltimore County. Based

upon these reviews, I am convinced that the proposed tower addition will not be detrimental to the health, safety or general welfare of the locale. Thus, the Petition for Special Exception will be and is hereby granted for the reasons set forth in the aforesaid Memorandum Opinion. That opinion is incorporated by reference herein.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested should be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner of Baltimore County this 10th day of September, 1993 that, pursuant to the Petition for Special Exception, approval for a wireless transmitting and receiving facility on the above subject site, be and is hereby GRANTED, subject, however, to the following restriction which is a condition precedent to the relief granted herein.

1. The Petitioner is hereby made aware that proceeding at this time is at its own risk until such time as the 30 day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioner would be required to return, and be responsible for returning, said property to its original condition.

Lawrence E. Schmidt  
LAWRENCE E. SCHMIDT  
Zoning Commissioner for  
Baltimore County

LES:mmn

ORDER RECEIVED FOR FILING  
Date 9/10/93  
By Th. Barhight

MICROFILMED

IN RE: PETITION FOR SPECIAL EXCEPTION  
E/s Lathe Rd. & 3,029' SE of c/l  
of Dolefield Rd. & Watts Rd.  
4613 Lathe Road  
2nd Election District  
3rd Councilmanic District  
Legal Owner: Baltimore County  
Contract Purchaser: Ram Mobile  
Data USA Ltd. Partnership  
Petitioners

BEFORE THE  
ZONING COMMISSIONER  
OF BALTIMORE COUNTY  
CASE No. 93-427-X

## MEMORANDUM OPINION

This matter comes before the Zoning Commissioner as a Petition for Special Exception for the property located at 4613 Lathe Road in the Owings Mills section of Baltimore County. The Petition is filed by the property owner, Baltimore County, a body politic, and its lessee, Ram Mobile Data USA Ltd. Partnership (hereinafter "Ram Mobile"). The Petition seeks approval for a wireless transmitting and receiving facility on the subject site, to be operated by a private corporation, Ram Mobile.

Appearing at the public hearing was Michael A. Stripeikis, on behalf of Ram Mobile. Also appearing at the public hearing was Thomas A. Kieffer, a Registered Landscape Architect in the State of Maryland. Mr. Kieffer is employed with Ben Dyer Associates, Inc., the engineering firm which prepared the site plan. This plan has been accepted into the record as Petitioner's Exhibit No. 1. The Petitioners were represented by G. Scott Barhight, Esquire. Appearing in opposition to the request was Howard Alderman, Jr., Esquire, an attorney for Lyons Mill Partnership. Lyons Mill Partnership owns an abutting property.

The facts presented in this case are largely not in dispute. However, the matter presents a rather novel and interesting legal issue.

ORDER RECEIVED FOR FILING  
Date 9/10/93  
By Th. Barhight

MICROFILMED



As noted above, Baltimore County owns the subject property, which is part of a rather substantially sized tract of land in Owings Mills not far from Lathe Road. Vehicular access to the property is by way of a small access road. Along its length from Lathe Road to the County property, the access road abuts properties owned by Edward G. and Bonnie M. Sommers, Charles and Elva M. Lathe, and Lyons Mills Partnership. Previously, the County has developed a small portion of the tract by construction of a communications tower and related improvements. The County's existing improvements on site are clearly shown on Petitioners' Exhibit No. 1. The existing tower is 400 ft. in height and is part of the County's emergency communication system. The tower is used to foster communications in the County's emergency network and to meet the needs of the Police and Fire Departments. Further, a small area adjacent to the tower has been improved with a stone base (impervious) area, a small equipment building and fencing.

The co-Petitioner, Ram Mobile, has contracted with Baltimore County to lease a small area of the site and tower. Ram Mobile specializes in cellular communications. Although Ram Mobile is not involved in the cellular telephone industry, similar technology is employed by the company to provide transmission of computer data and similar information. Ram Mobile proposes to install two 12 ft. long antennas on the top of the existing tower. These antennas will serve as part of Ram Mobile's cellular communication network throughout the County and State of Maryland. Further, a proposed 10 x 8 ft. equipment building will be constructed at the base of the tower. Ram Mobile's communication line will run from the building up through the interior of the tower and terminate at the antennas on the top thereof. As is the case with many of these communication towers, the facility will be unmanned. However, routine maintenance will be occasionally

performed by a Ram Mobile employee. The private communications received and relayed by the antenna from Ram Mobile's customers will not interfere with the public communications network of Baltimore County. That is, the communication frequencies are compatible with one another. Further, clearly Ram Mobile's use is not for any public purpose or in furtherance of any governmental function. Ram Mobile is a private corporation in business to make a profit for its stockholders by providing cellular communication services to the public.

These facts having been submitted, attention is now turned to the existing legal issue generated. Succinctly stated, the issue presented is whether the merits of the Petition for Special Exception relate only to the limited improvements proposed by Ram Mobile or, in the alternative, whether a private user's lease of the tower mandates that the special exception be adjudged based upon the impact of the entire tower on the surrounding locale.

As noted above, it is abundantly clear that the tower was constructed for governmental purposes. Further, the land is owned by Baltimore County, a body politic. As presently used, without Ram Mobile's improvements, all activity on the property relates to a government function, that is, communication between the police and fire departments and other County agencies. As such, the construction of the tower and the use of the property is exempt from the application of the Baltimore County Zoning Regulations. Baltimore County's exemption from its own zoning regulations was clearly stated in a recent case before the Court of Appeals of Maryland. See Glascock v. Baltimore County, Maryland, 321 Md. 118, 583 A2d 822 (1990). Indeed, that case dealt with an identical use (i.e. transmission tower). In that matter, a neighbor objected to the construction of a transmission

tower on property leased by Baltimore County. The Court, after consideration of the issue presented, stated that Baltimore County was exempt from its own zoning regulations and the tower use need not comply with any of the provisions of the Baltimore County Zoning Regulations (B.C.Z.R.). Therefore, in the instant case, Baltimore County's construction of the tower and use of the site is not subject to the B.C.Z.R. However, the issue before me turns on Ram Mobile's lease of the tower and site.

As to the Petitioners, they claim that the impact of only Ram Mobile's improvements should be considered in evaluating the Petition for Special Exception. They correctly note that irrespective of Ram Mobile's improvements, the tower is there, will remain there, and is not subject to compliance with the B.C.Z.R. Thus, they urge that consideration of the special exception before me should be limited only to the additional improvements made on the property by the Lessee. That is, the Petitioners aver that the sole issue for my consideration is whether the construction of the proposed 10 ft. x 8 ft. equipment building and the installation of two 12 ft. antennas will be detrimental to the health, safety and general welfare of the locale. If not, the Petitioners urge that the Petition must be approved pursuant to the language of Section 502.1 of the B.C.Z.R.

To the contrary, counsel for Lyons Mill Partnership argues that because the tower will be used to support a private use, the impact of the entire length thereof (all 412 ft.) must be considered under the parameters set forth in Section 502.1 of the regulations. That is, it is argued that the immunity enjoyed by Baltimore County from its zoning regulations does not extend to Ram Mobile. The Protestant avers that since Ram Mobile's improvements are meaningless without the infrastructure provided by the tower, the impact of the entire length of same must be considered.

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As authority for its position, the Protestant relies upon Section 103.2 of the B.C.Z.R. This section provides, "When any public use ceases or when title of unzoned public land passes into private ownership, public land or buildings shall not be used for private purposes until they shall have been zoned in conformance with these regulations."

In considering this argument, I believe that the Protestants have improperly expanded the breadth of the language of Section 103.2 and that this regulation is inapplicable here. By its own words, Section 103.2 applies only in those instances, "When any public use ceases or when title of unzoned public land passes into private ownership..." (emphasis added). In this instance, neither triggering event has occurred. The public use has not ceased; in fact, testimony was that Baltimore County will continue to use the tower for communication purposes. Further, the title to the property remains in the name of Baltimore County and has not been passed or transferred into private ownership. Thus, Section 103.2 is inapplicable. Having concluded that Section 103.2 is inapplicable, I have reviewed the balance of the B.C.Z.R. for guidance on the issue presented. Regrettably, the regulations provide no assistance. Further, I have found no other authority which is persuasive on the issue. Clearly, the issue presented is analogous to the often repeated debate about which came first, the chicken or the egg. Ram Mobile's improvements are not feasible without the tower; nonetheless, the tower is there and will so remain, not subject to the zoning regulations, for so long as utilized by Baltimore County.

After due consideration, I am persuaded that the Petitioners' logic should be adopted. To repeat, the tower is there, will remain there, and will continue to be used by Baltimore County, irrespective of whether Ram Mobile leases a portion of the structure. To ignore this fact, as the

Protestant urges, would be akin to eliminating the immunity which Baltimore County enjoys from its own zoning regulations. Particularly, in view of the County's clear language in Glascock, only the changes to the tower identifiable to the private use should be the subject of the special exception. For example, if factually I determined that the entire tower did not meet the tests set forth in Section 502.1 of the B.C.Z.R., my decision would be meaningless. The tower would remain, as constructed, and used by Baltimore County. Thus, I must consider the proposed special exception before me in context of whether the improvements necessitated by Ram Mobile's lease satisfy the special exception statute in Baltimore County (B.C.Z.R. Section 502.1).

In this respect, I am persuaded that the Petitioner has satisfied its burden at law. Particularly, the testimony of Mr. Stripeiki from Ram Mobile and Mr. Kieffer, the landscape Architect, is persuasive. The testimony and evidence presented was that Ram Mobile's improvements at the proposed location shown will not adversely impact the surrounding locale in a manner over and above the inherent impacts of such a use. See Schultz v. Pritts, 291 Md. 1, 432 A2d 1319 (1981). Mr. Kieffer's testimony was particularly persuasive on this point. Although he testified that communication towers such as that proposed, may not enhance the surrounding residential communities from a land planning standpoint, his testimony satisfies the tenets of the Schultz, *infra*, holding.

Having resolved the major issue, several other issues raised by the Protestant must be considered. First, the Protestant objects to the posting of the property which notified the public of the hearing held for this case. Specifically, the Protestant urges that the sign was not placed directly within the special exception area, but rather near the intersection

tion of the access road and Lathe Road. In regard to this point, the facts are clear; the sign was posted in a conspicuous place, as required. Further, the presence of Protestant's counsel lends credence to the belief that public notice was actually afforded. If the sign had been posted precisely at the base of the tower, it clearly would have been seen by no one, but for the maintenance personnel who visit the site. The advertising and posting of the property were proper.

Finally, counsel for the Protestant argues that the Petition for Special Exception is improperly filed and does not comply with Section 502.1 of the B.C.Z.R. That section provides additional standards which must be satisfied before approval can be granted for a Petition for Special Exception involving a wireless transmitting facility. In response to this claim, the Petitioners correctly note the exemption language contained in Section 502.7.D.1. This language exempts a Petitioner from satisfying many of the requirements in Section 502.7 when antennas are located on existing structures. As counsel for the Petitioners argued, that exemption was, no doubt, enacted by the County Council to encourage placement of antennas on existing improvements and thus reduce tower construction in Baltimore County. By this exemption the Council, clearly, encouraged the businesses engaged in the cellular communications industry to utilize existing structures to place their antennae. This utilization would eliminate an overwhelming dotting of the landscape with communication towers. The Petitioners' interpretation of this section is correct and as such, the special exception before me is exempt from the requirements set forth in Section 502.7.C.1, 2, 3, 4 and 5. However, compliance with Sections 502.7.C.6, 7, 8, 9 and 10 is not exempt. In this respect, general notes on the site plan satisfied the requirements of Sections 502.7.C.6, 7, 8, and 9. That is,

the plan, as submitted, certifies compliance with each of the requirements set forth in those numbered sections.

However, Section 502.7.C.10 requires the Petitioner to submit to the Zoning Commissioner an environmental impact statement. Although testimony was offered as to the environmental effects of Ram Mobile's improvements, a written impact statement was not submitted. The testimony offered at the hearing seemingly proves that there will be no adverse environmental effects by Ram Mobile's improvements. Nonetheless, this testimony is not enough. The regulations mandate a written impact statement. Further, the Zoning Plans Advisory Committee comments are absent any report from the Department of Environmental Protection and Resource Management that such a statement has been waived and/or approved by that agency. Thus, based on the clear language of Section 502.7.C.10, the Petitioner must submit an environmental impact statement. They have failed to do so, and their filing is, therefore, incomplete.

Due to this incomplete filing, I shall hold this matter sub curia for a period of 30 days. Within that time, a written environmental impact statement shall be prepared and submitted to me with a copy to Protestant's counsel. Counsel for the Protestant shall thereafter have 10 days to submit a rebuttal or request that additional evidence be received. Thereafter, a decision shall be rendered on the Petition in accordance with the full record of this case.

*Lawrence E. Schmidt*  
LAWRENCE E. SCHMIDT  
Zoning Commissioner for  
Baltimore County

LES:mmn

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Baltimore County Government  
Zoning Commissioner  
Office of Planning and Zoning



Suite 113 Courthouse  
400 Washington Avenue  
Towson, MD 21204

(410) 887-4386

September 9, 1993

G. Scott Barhight, Esquire  
Whiteford, Taylor, Preston, etc.  
500 Court Towers  
210 W. Pennsylvania Avenue  
Towson, Maryland 21204

RE: Petition for Special Exception  
Case No. 93-427-X  
Property: 4613 Lathe Road  
Legal Owner: Baltimore County  
Contract Purchaser: Ram Mobile Data USA Ltd. Partnership

Dear Mr. Barhight:

Enclosed please find the decision rendered in the above captioned case. The Petition for Special Exception has been granted, in accordance with the attached Order.

In the event the decision rendered is unfavorable to any party, please be advised that any party may file an appeal within thirty (30) days of the date of the Order to the County Board of Appeals. If you require additional information concerning filing an appeal, please feel free to contact our Appeals Clerk at 887-3391.

Very truly yours,

*Lawrence E. Schmidt*  
LAWRENCE E. SCHMIDT  
Zoning Commissioner

LES:mmn  
att.  
cc: Thomas A. Kieffer  
cc: Mr. Michael A. Stripeiki  
cc: Howard Alderman, Jr., Esquire